

No. 1999-1

AN ACT

SB 10

Providing for borrowing for capital facilities; conferring powers and duties on various administrative agencies and officers; making appropriations; and making repeals.

TABLE OF CONTENTS

Chapter 1. Preliminary Provisions

Section 101. Short title.

Chapter 3. Capital Facilities

Section 301. Recodification.

Section 302. Definitions.

Section 303. Procedures for capital budget bill and debt-authorizing legislation.

Section 304. Certificates of the Auditor General.

Section 305. Constitutional limitations, authorizations, issuing officials.

Section 306. Temporary borrowing.

Section 307. Bonds, issue of bonds and notes, maturity, interest.

Section 308. Direct obligations, exemption from taxation, means of payment.

Section 309. Sale of bonds.

Section 310. Disposition and use of proceeds.

Section 311. Capital Debt Fund; investments; redemption of bonds.

Section 312. Funding bonds.

Section 313. Reporting requirements.

Section 314. Registration of bonds.

Section 315. Voting requirements.

Section 316. Appropriation.

Section 317. Appropriation for and limitation on redevelopment assistance capital projects.

Section 318. Funding and administration of redevelopment assistance capital projects.

Chapter 5. Sports Facilities Financing

Section 501. Definitions.

Section 502. Commonwealth funds.

Section 503. Eligibility.

Section 504. Requirement.

Section 505. Other agreements.

Section 506. Report.

Section 507. Financial commitment.
Section 508. Enforcement and penalties.
Section 509. Expiration.
Section 510. Scope.

Chapter 51. Miscellaneous Provisions

Section 5101. Repeals.
Section 5102. Effective date.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1 PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Capital Facilities Debt Enabling Act.

CHAPTER 3 CAPITAL FACILITIES

Section 301. Recodification.

This chapter is a recodification of Article XVI-B of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code. This chapter is a reenactment and continuation of Article XVI-B of The Fiscal Code.

Section 302. 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:

“Acquisition cost.” The cost of acquiring:

- (1) buildings;
- (2) structures;
- (3) facilities;
- (4) property, real, personal or mixed, tangible or intangible; or
- (5) any other interest;

necessary or desirable in connection with a capital project, whether the acquisition be by purchase or by condemnation, including the amount of an award or final judgment in a proceeding to acquire by condemnation lands, rights-of-way, rights-of-slope, property rights, franchises, easements or other interests as deemed necessary or convenient in connection with the acquisition or construction of a project, and costs of options and partial payments on and under options.

“Capital project.” A project which is financed by debt or by other funds and which meets all of the following:

- (1) Is an undertaking to construct, repair, renovate, improve, equip, furnish or acquire any:

(i) building, structure, facility or physical public betterment or improvement;

(ii) land or rights in land; or

(iii) furnishings, machinery, apparatus or equipment for a building, structure, facility or physical public betterment or improvement.

(2) Is designated in a capital budget as a capital project.

(3) Has an estimated useful life in excess of five years.

(4) Has an estimated financial cost in excess of \$100,000. This paragraph does not apply to original equipment or furnishings for previously authorized public improvement projects.

Capital projects are categorized as community college projects, flood control projects, highway projects, other capital projects, PIDA projects, public improvement projects, redevelopment assistance capital projects, redevelopment assistance projects, site development projects and transportation assistance projects.

“Commonwealth agency or authority.” Excludes an agency or authority organized by action of a political subdivision.

“Community college projects.” Projects for a community college of a type which the State Public School Building Authority is authorized to undertake under the provisions of the act of July 5, 1947 (P.L.1217, No.498), known as the State Public School Building Authority Act, to the extent that obligations issued to finance these projects are debt within the meaning of this chapter.

“Construction cost.” Obligations incurred:

(1) for labor and to contractors, builders and materialmen in connection with the construction, fabrication or assembly of a capital project;

(2) for machinery and equipment required for construction under paragraph (1);

(3) for the restoration of property damaged or destroyed in connection with construction under paragraph (1); and

(4) for the payment of damages incurred by others incident to or consequent upon construction under paragraph (1) which the Commonwealth or its agency or authority is under legal obligation to pay or desires to pay in settlement of a disputed claim of liability.

“Debt.” The issued and outstanding obligations of the Commonwealth incurred without a vote of the electorate or incurred with such vote under a law making such debt subject to the provisions of section 7(a)(4) of Article VIII of the Constitution of Pennsylvania. The term includes obligations of Commonwealth agencies and authorities to the extent that such obligations are to be repaid from lease rentals or other charges payable directly or indirectly from revenues of the Commonwealth. The term does not include:

(1) that portion of debt which is to be repaid from charges made to the public for the use of the capital projects financed, as such portion of debt may be determined by the Auditor General;

(2) obligations to be repaid from lease rentals or other charges payable by a school district or other local taxing authority; or

(3) obligations to be repaid by agencies or authorities created for the joint benefit of the Commonwealth and one or more other state governments.

“Financial cost.” Acquisition cost and construction cost, where applicable, and an allocated portion of all of the following:

(1) Fees, expenses and costs of issuing obligations the proceeds of which are used to finance the project.

(2) Fees, expenses and costs of issuing and selling notes or replacement notes issued under this chapter.

(3) Establishing and maintaining any purchase, loan or credit agreements in connection with an issue or series of issues of notes, and the fees and expenses of any fiscal or loan and transfer agent and bond counsel incurred in connection with the issue of the obligations.

(4) Premiums on insurance in connection with a project during construction.

(5) Taxes and other municipal or governmental charges lawfully levied or assessed during construction.

(6) Fees and expenses of architects, engineers and other professionals for:

(i) making preliminary studies, reports or estimates of costs;

(ii) preparing plans and specifications and inspecting and reviewing the progress of construction; and

(iii) obtaining abstracts of title, title insurance or title opinions.

(7) Costs and expenses of preliminary investigations, replanning, surveys and reports to determine the proper scope, feasibility and probable costs of capital projects to be included in future capital budgets.

(8) Costs of administration, including the salaries and expenses of administrators, reviewing architects and engineers, construction inspectors, accountants and legal counsel of the Commonwealth and its agencies or authorities, incurred for the proper planning and supervision of the capital projects program.

“Flood control projects.” Projects of the type which the Water and Power Resources Board is authorized to construct, improve, equip, maintain, acquire or operate under the provisions of the act of August 7, 1936 (1st Sp.Sess., P.L.106, No.46), referred to as the Flood Control Law.

“Fund.” Any fund other than a fund, or an account in a fund, established by this chapter.

“Funding bonds.” General obligation bonds used to provide funds for and towards the payment of outstanding notes or to refund other outstanding bonds prior to or at or after the stated maturity date of the bonds being refunded or of the notes being funded.

“Highway projects.” Projects of a type which the Department of Transportation is authorized to construct, improve, equip, maintain, acquire or operate.

“Issuing officials.” The Governor, the Auditor General and the State Treasurer.

“Net debt.”

- (1) The aggregate principal amount of all debt; plus
- (2) the amount of any past due and unpaid interest on that debt; minus
- (3) all funds held exclusively for the payment of that principal and past due interest.

Neither accrued but not yet past due interest nor funds held for the payment of the interest next falling due, up to the amount of such interest, shall be included in such computations.

“Notes.” Temporary obligations and replacement notes issued by the Commonwealth pursuant to this chapter in anticipation of bonds.

“Obligations.” Notes or bonds of the Commonwealth, its agencies or authorities, issued pursuant to any debt-authorizing act.

“Other capital projects.” Only that undertaking to equip and furnish those public improvement projects which are specifically enumerated under the heading of “Other Capital Projects” in section 3(d) of the act of July 20, 1968 (P.L.560, No.218), known as the Capital Budget Act for the 1968-1969 Fiscal Year. Upon final completion of the undertakings authorized by section 3(d) of that act, no equipment or furnishing undertaking or any other undertaking or project shall be listed in any capital budget act for the fiscal year 1969-1970 or any fiscal year thereafter under the heading of “Other Capital Projects”; but if the undertaking or project comes within the meaning of a capital project, it shall be listed in future capital budget acts as a capital project under one of the categories enumerated in paragraph (2) of the definition of “capital project.”

“PIDA projects.” Projects of the type which the Pennsylvania Industrial Development Authority is authorized to finance under the provisions of the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

“Public improvement projects.” Projects of a type which the General State Authority is authorized to construct, improve, equip, furnish, maintain, acquire or operate under the provisions of the act of March 31, 1949 (P.L.372, No.34), known as The General State Authority Act of one thousand nine hundred forty-nine, and projects which the Department of General Services is authorized to construct, improve, equip, furnish, maintain, acquire or operate.

“Redevelopment assistance capital project.” The design and construction of facilities which meet the following:

- (1) Are facilities, other than housing units, highways, bridges, waste disposal facilities, sewage facilities or water facilities, which cannot obtain funding under other Federal or State programs.
- (2) Are economic development projects which generate substantial increases in employment, tax revenues or other measures of economic

activity. This paragraph includes projects with cultural, historical or civic significance.

(3) Are facilities which have a regional or multijurisdictional impact.

(4) Are eligible for tax-exempt bond funding under existing Federal law and regulations.

(5) Have a 50% non-State participation documented at the time of application, including a portion of any funds reserved for future physical maintenance and operation of the facilities:

(i) at least half of which is secured funding;

(ii) toward which the only noncash non-State participation permitted is land or fixed assets which have a substantial useful life and are directly related to the project; and

(iii) toward which State funds from other programs may not be used.

(6) Have a total project cost as follows:

(i) At least \$5,000,000 for projects in:

(A) counties of the first class; or

(B) counties of the second class.

(ii) At least \$1,000,000 for projects in counties of the second class A through eighth class.

(iii) At least \$1,000,000 for projects in:

(A) municipalities designated as financially distressed municipalities under the act of July 10, 1987 (P.L.246, No.47), known as the Municipalities Financial Recovery Act;

(B) municipalities which are identified at the time of application by the Department of Community and Economic Development under the department's early warning system as scoring at least one-half standard deviation above the mean score; or

(C) municipalities which have part or all of an enterprise zone within the municipal boundaries.

(7) Have a cooperation agreement between the applicant and a redevelopment authority or industrial development authority or general purpose unit of local government if the applicant does not administer the grant. Applicants can be any of the following:

(i) A redevelopment authority.

(ii) An industrial development authority.

(iii) A general purpose unit of local government.

(iv) A local development district which has an agreement with a general purpose unit of local government under which the unit assumes ultimate responsibility for debt incurred to obtain the 50% non-State participation required by paragraph (5).

"Redevelopment assistance projects." Projects of the type which the Department of Community and Economic Development is authorized to finance by capital grants under the act of May 20, 1949 (P.L.1633, No.493),

known as the Housing and Redevelopment Assistance Law, and Reorganization Plan No.2 of 1966.

“Replacement notes.” Notes:

- (1) the net proceeds of which are used to pay principal, accrued interest and premium of previously issued notes or replacement notes; and
- (2) which evidence the same temporary borrowing of the Commonwealth as the notes or replacement notes replaced.

“Site development projects.” Projects of the type authorized for the Department of Community and Economic Development under the act of May 6, 1968 (P.L.117, No.61), known as the Site Development Act.

“Tax revenues.” All revenues from Commonwealth imposed taxes, regardless of the fund to which they are deposited, including revenues from motor vehicle licenses, which are declared to be taxes for purposes of this chapter. The term does not include revenues from any other licenses or from interest, fees, fines or penalties.

“Transportation assistance projects.” Projects of a type which the Department of Transportation is authorized to construct, improve, equip, furnish, maintain, acquire or operate under 74 Pa.C.S. Pt. II (relating to public transportation) and capital projects which the Department of Transportation is authorized to construct, improve, equip or furnish under the provisions of the act of February 11, 1976 (P.L.14, No.10), known as the Pennsylvania Rural and Intercity Common Carrier Surface Transportation Assistance Act, including the acquisition of property authorized in those statutes.

Section 303. Procedures for capital budget bill and debt-authorizing legislation.

(a) Legislative process.—A capital budget prepared in accordance with this chapter shall be submitted for each fiscal year by the Governor to the General Assembly and shall be considered in the form of a bill as provided in Article III of the Constitution of Pennsylvania.

(b) Itemization.—The capital budget bill must specifically itemize, by brief identifying description and estimated financial cost, the capital projects to be financed from the proceeds of obligations of the Commonwealth except where such itemization is contained in or approved by prior legislation referred to in the capital budget bill or except where such itemization is included in one or more supplemental capital budget bills. Projects must be listed in separate categories as well as according to the fund to be charged with the repayment of the obligations to be incurred. The capital budget bill must state the maximum amount of such obligations which may be incurred in the ensuing fiscal year to provide funds for and towards the financial costs of each category of capital projects, which shall be by the issue of general obligations of the Commonwealth.

(c) Timing.—Each year the Governor shall submit a capital budget bill for the ensuing fiscal year.

(d) **Additional bills.**—At the time the Governor submits the capital budget or a supplement, the Governor shall, to the extent the debt to be incurred is not within the limits of legislation then in force authorizing the incurring of debt, submit additional bills for each category of capital projects, authorizing the incurring of debt to provide funds for and towards the payment of the financial costs of capital projects in such category which have been specifically itemized in a capital budget for the same or any prior year.

(e) **Categories.**—Each debt-authorizing bill must do all of the following:

(1) State the category of capital projects to be financed by the debt so authorized but need not enumerate the capital projects to be financed.

(2) Authorize the incurring of debt in not less than the amount of the financial cost of all capital projects in such category not covered by a previous debt authorization, including any overall allowance for contingencies.

(3) State the estimated useful lives of the capital projects to be financed in such detail as may be requisite if capital projects of varying useful lives are to be combined for financing purposes.

(4) State the maximum term of the debt to be incurred.

Section 304. Certificates of the Auditor General.

(a) **Requirement.**—By March 1 and September 1, the Auditor General shall certify to the Governor and the General Assembly the average annual tax revenues deposited in all funds in the five fiscal years ended next preceding the date of the certificate, determined by adding the total of such revenues so deposited and dividing the sum by five. At the time of each certification, the Auditor General shall also certify as separate items:

(1) the amount of outstanding net debt as of the end of the preceding fiscal year;

(2) the amount of outstanding net debt as of the date of the certificate;

(3) the difference between the limitation upon all outstanding net debt as provided in section 7(a)(4) of Article VIII of the Constitution of Pennsylvania and paragraph (2);

(4) the amount of outstanding net debt scheduled to be repaid during the remainder of the fiscal year in which the certificate is issued;

(5) the amount of debt authorized by law to be issued but not yet incurred; and

(6) the amount of outstanding obligations excluded from outstanding debt as self-sustaining pursuant to section 7(c)(1), (2) and (3) of Article VIII of the Constitution of Pennsylvania.

(b) **Additional certificates.**—As required in connection with the sale of or settlement for obligations of the Commonwealth, the Auditor General shall issue certificates containing items listed in subsection (a)(2) and (3) as of the dates determined by the Governor to be relevant to such sales or settlements.

(c) **Reliance on certifications.**—In making certificates, the Auditor General shall be entitled to rely, as to any of items listed in subsection (a)(1) through (5), upon:

- (1) any certificate furnished by the State Treasurer with respect to outstanding Commonwealth general obligation bonds;
- (2) any certificate furnished by the Department of Revenue; and
- (3) any certificate furnished by the appropriate bank or trust company operating as fiscal agent or trustee with respect to the outstanding obligations of any authority.

Section 305. Constitutional limitations, authorizations, issuing officials.

Within the limitation set forth in section 7(a)(4) of Article VIII of the Constitution of Pennsylvania, the issuing officials are authorized and directed to borrow, on the credit of the Commonwealth and subject to the conditions and limitations of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, money necessary to carry out the purposes of debt-authorizing acts passed in accordance with the provisions of this chapter.

Section 306. Temporary borrowing.

(a) Authorization.—Pending the issuance of bonds of the Commonwealth as authorized in section 307, the issuing officials are authorized, in accordance with the provisions of this chapter and on the credit of the Commonwealth, to make temporary borrowings not to exceed three years in anticipation of the issue of bonds in order to provide funds in such amounts as deemed advisable to carry out the purposes of any debt-authorizing acts prior to the issue of bonds. In order to provide for and in connection with the temporary borrowings, the issuing officials are authorized in the name and on behalf of the Commonwealth to enter into any purchase, loan or credit agreement or other agreement with banks, trust companies, lending institutions, investment banking firms or persons in the United States having the appropriate power. Agreements may contain provisions not inconsistent with the provisions of this chapter, as authorized by the issuing officials.

(b) Evidence.—All temporary borrowings made under the authorization of this section shall be evidenced by notes of the Commonwealth, which shall be issued for such amounts not exceeding in the aggregate the applicable statutory and constitutional debt limitation, in form and denominations and subject to terms and conditions of sale and issue, prepayment or redemption and maturity, rate of interest and time of payment of interests, as the issuing officials authorize and direct and in accordance with the applicable debt-authorizing act. Authorization and direction may provide for the subsequent issuance of replacement notes to refund outstanding notes or replacement notes. Replacement notes shall, upon issuance, evidence the borrowing and may specify other terms and conditions with respect to the notes and replacement notes authorized for issuance as the issuing officials may determine and direct.

(c) Replacement notes.—

(1) If the authorization and direction of the Governor, the Auditor General and the State Treasurer provide for the issuance of replacement notes, the Governor, the Auditor General and the State Treasurer are

authorized, in the name and on behalf of the Commonwealth, to issue, enter into or authorize and direct the State Treasurer to do the following:

(i) Enter into agreements with banks, trust companies, investment banking firms or other institutions or persons in the United States having appropriate power to purchase or underwrite an issue or series of issues of notes.

(ii) Enter into a purchase, loan or credit agreement.

(iii) Draw money pursuant to a purchase, loan or credit agreement on the terms and conditions set forth in the agreement.

(iv) Issue notes as evidence of borrowings made under a purchase, loan or credit agreement.

(v) Appoint an issuing and paying agent or agents with respect to notes.

(vi) Perform acts necessary or appropriate to provide for the payment, when due, of the interest on and principal of notes.

(2) Agreements under paragraph (1) may provide that the compensation of purchasers or underwriters of notes or replacement notes, by discount in the purchase price of the notes or by payment of a fixed fee or commission at the time of issuance of the notes, and that all other costs and expenses, including fees for agreements related to the notes, issuing and payment agent costs and costs and expenses of issuance, may be paid from the proceeds of the notes.

(d) Issuance of replacement notes.—If the authorization and direction of the Governor, the Auditor General and the State Treasurer provide for the issuance of replacement notes, the State Treasurer shall, by the time of delivery of these notes or replacement notes, determine the principal amounts, dates of issuance, interest rates or procedures for establishing interest rates, rates of discount, denominations and all other terms and conditions relating to the issuance and shall perform all acts necessary to pay or cause to be paid when due all principal of and interest on the notes being refunded by replacement notes and to assure that payment may draw upon any money available for that purpose pursuant to any purchase, loan or credit agreements established with respect to the notes, subject to the authorization and direction of the Governor, the Auditor General and the State Treasurer.

(e) Funding and retirement.—Outstanding notes evidencing borrowings may be funded and retired by the issuance and sale of the bonds of the Commonwealth under section 312. Funding bonds must be issued and sold not later than a date three years after the date of issuance of the first notes evidencing the borrowings, to the extent that payment of the notes has not otherwise been made or provided for by sources other than proceeds of replacement notes.

(f) Proceeds.—The proceeds of temporary borrowings except those evidenced by replacement notes shall be paid to the State Treasurer to be held and disposed of under section 310. The proceeds of temporary borrowings

evidenced by replacement notes shall be paid to the State Treasurer to be held and disposed of under subsection (d).

Section 307. Bonds, issue of bonds and notes, maturity, interest.

(a) Issue.—As evidence of indebtedness as authorized, bonds, which may be for one or more purposes, shall be issued under this chapter for all of the following purposes:

(1) To fund or retire notes issued under section 306 and bonds issued under paragraph (2).

(2) To provide money necessary to carry out the purposes of a debt-authorizing statute.

(b) Series.—The bonds of each issue shall constitute a separate series to be designated by the issuing officials or may be combined for sale as one series with other general obligation bonds of the Commonwealth. Each series of bonds shall bear such rate of interest as determined by the issuing officials. Bonds shall be issued in denominations and in form, whether coupon or registered as to both principal and interest, and with or without such provisions of interchangeability, as the issuing officials determine. If interest coupons are attached, they shall, unless the debt-authorizing act provides otherwise, contain the facsimile signature of the State Treasurer.

(c) Terms and conditions.—

(1) Except as set forth in subsection (a) or (b), the terms and conditions of issue, redemption and maturity and time of payment of interest shall be as the issuing officials shall specify. Bonds of any series shall mature within a period not to exceed the estimated useful lives of the capital projects as stated in the debt-authorizing act but not later than 30 years from the date of issuance.

(2) The issuing officials shall provide for the amortization of the bonds in substantial and regular amounts over the term of the debt, but the first retirement of principal shall be stated to mature prior to the expiration of a period of time equal to one-tenth of the time from the date of the first obligation issued to evidence the debt to the date of the expiration of the term of the debt.

(3) Retirements of principal shall be regular and substantial if made in annual or semiannual amounts whether by stated serial maturities or by mandatory sinking fund retirements computed in accordance with either a level annual debt service plan as nearly as may be or upon the equal annual maturities plan.

(4) If debt is incurred in one issue of bonds to provide funds for and towards the financial cost of capital projects having estimated useful lives of varying length, the following shall apply:

(i) The aggregate of the financial costs shall be considered as the debt to be incurred for the purpose of fixing the regular and substantial amounts of principal to be retired.

(ii) The term of the debt shall be to the end of the longest estimated useful life for the purpose of determining the first date for the

retirement of principal. At the end of the estimated useful life of each project, the aggregate principal retirements required to be made at or before that date shall exceed:

(A) the aggregate financial cost of all capital projects having the same or shorter estimated useful lives; or

(B) if bonds are issued for less than the full financial cost of all projects being financed in the same category, a proportionate amount in each case.

(5) The issuing officials are authorized to carry out the provisions of this chapter relating to the issuance of bonds and shall determine all matters in connection with the issuance of bonds subject to the provisions hereof.

(d) Verification.—

(1) Bonds issued under the authority of this chapter, unless the debt-authorizing acts provide another method of signature, shall bear the facsimile signatures of the issuing officials and a facsimile of the Great Seal of the Commonwealth of Pennsylvania and shall be countersigned by an officer of an authorized loan and transfer agent of the Commonwealth.

(2) The action taken by the issuing officials authorizing the issuance of bonds or notes shall set forth the title and citation of the debt-authorizing acts.

(3) Notes and bonds issued under the authority of this chapter shall:

(i) either contain a similar recital or refer to the recital of titles and citations set forth in the action authorizing issuance; and

(ii) state that the bonds or notes are issued in accordance with the provisions of this chapter. In any action or proceeding involving the validity or enforceability of bonds or notes under this chapter, a recital under paragraph (3) shall be conclusive as to their authorization.

Section 308. Direct obligations, exemption from taxation, means of payment.

(a) Direct obligation.—Notes and bonds issued under this chapter shall be direct obligations of the Commonwealth, and the full faith and credit of the Commonwealth are pledged for the payment of the interest as it becomes due and the payment of the principal at maturity.

(b) Exemptions.—Notes and bonds issued under this chapter shall be exempt from taxation for State and local purposes except as provided under the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(c) Payment.—The principal of and interest on notes and bonds issued under this chapter shall be payable in lawful money of the United States of America.

Section 309. Sale of bonds.

(a) Public sale.—When bonds are issued under this chapter, they shall be offered for sale at not less than 98% of the principal amount and accrued interest and shall be sold by the issuing officials to the highest and best bidder or bidders after public advertisement on terms and conditions and upon

open competitive bidding as the issuing officials direct. The manner and times of advertising shall be prescribed by the issuing officials.

(b) Private sale.—Any portion of a bond issue offered under subsection (a) and not sold or subscribed to may be disposed of by private sale by the issuing officials in a manner and at prices, not less than 98% of the principal amount and accrued interest, as the Governor directs. No commission shall be allowed or paid for the sale of bonds issued under this chapter.

(c) Temporary bonds.—Until permanent bonds can be prepared, the issuing officials may issue, in lieu of permanent bonds, temporary bonds in form and with privileges as to the registration and exchange for permanent bonds as may be determined by the issuing officials.

Section 310. Disposition and use of proceeds.

(a) General rule.—The proceeds of temporary borrowings made under section 306, other than the proceeds of replacement notes, and the proceeds from the sale of bonds, other than funding bonds, shall be paid to the State Treasurer and be held by the State Treasurer in a separate fund and shall be deposited in depositories as selected by the State Treasurer to the credit of the Capital Facilities Fund, which shall have such separate accounts as may be deemed desirable by the issuing officials, but not less than one separate account for each category of capital projects. The proceeds of replacement notes shall be deposited and applied as provided in section 306(d). The proceeds of funding bonds shall be deposited and applied as provided in section 312.

(b) Dedication.—The money in the Capital Facilities Fund is specifically dedicated to meeting the financial costs of capital projects. The money shall be paid by the State Treasurer to those departments, agencies or authorities authorized to expend it as required by them to pay financial costs at the time the department, agency or authority certifies the payment to be due and payable.

(c) Investment.—Pending their application to the purposes authorized, money held or deposited by the State Treasurer may be invested and reinvested as are other funds in the custody of the State Treasurer in the manner provided by law. Earnings received from the investment or deposit of the funds shall be paid into the State Treasury to the credit of the account in the Capital Facilities Fund to which the funds were originally deposited. Section 311. Capital Debt Fund; investments; redemption of bonds.

(a) Capital Debt Fund.—Bonds issued under this chapter shall be paid at maturity. Interest due after July 1, 1968, on bonds and on notes issued under this chapter shall be paid by the Board of Finance and Revenue from the Capital Debt Fund. The General Assembly shall appropriate annually the money necessary to pay the interest on the bonds and notes and the principal of the bonds and notes at maturity if no other provision is made. Money appropriated shall be paid into the Capital Debt Fund by the State Treasurer.

(b) Investment.—Money received under subsection (a) prior to the date for disbursement shall be invested by the board pending disbursement in

securities as are provided by law for the investment of surplus money of the Commonwealth. The investment and the accumulations in the Capital Debt Fund shall be devoted to and be used exclusively for the payment of the interest accruing on the bonds and notes and for the redemption of the bonds and notes at maturity or upon the redemption date if called for prior redemption. The board is authorized to use such funds for the purchase and retirement of all or any part of the bonds issued under this chapter; but no purchase may be made which will reduce the money in the Capital Debt Fund below the amount necessary to pay all principal and interest still to become due in the fiscal year of the purchase. If all or any part of any bonds issued under this chapter are purchased by the Commonwealth, they shall be canceled and returned to the State Treasurer as canceled and paid bonds. Thereafter, all payment of interest on the bonds shall cease; and the canceled bonds and coupons shall be destroyed in accordance with the act of April 27, 1925 (P.L.319, No.180), entitled, "An act relating to the destruction of cancelled or unused bonds or other evidences of indebtedness of this Commonwealth."

Section 312. Funding bonds.

The issuing officials, subject to the provisions of a bond resolution or trust indenture, are authorized to issue funding bonds for the purpose of refunding obligations then outstanding to provide funds to redeem and retire such outstanding obligations with accrued interest and any premium payable thereon at maturity or any call date. The issuance of funding bonds, the maturities and other details, the rights of the holders and the duties of the issuing officials shall be governed by the applicable provisions of sections 303 through 311. Funding bonds may be issued to refund bonds previously issued for refunding purposes. The proceeds of the sale of funding bonds shall be paid to the State Treasurer and applied to the payment of the principal of, and any accrued interest and premium on, the bonds or notes for the refunding of which funding bonds have been issued. No funding bonds shall be issued having a stated maturity date later than the expiration of the useful life of the capital projects constructed or acquired from the proceeds of the debt originally incurred in respect of the bonds or notes being refunded, nor shall funding bonds be issued to refund beyond the same fiscal year any portion of debt required by this chapter and the Constitution of Pennsylvania to be retired in the year of issue of the funding bonds in order to comply with the retirement in substantial and regular amounts as provided in section 307(d).

Section 313. Reporting requirements.

The State Treasurer shall determine and report to the Budget Secretary by January 1 of each year the amount of money necessary for the payment of interest on outstanding obligations and the principal of the obligations for the following fiscal year and the time and amounts of payments.

Section 314. Registration of bonds.

The Auditor General shall prepare the necessary registry books to be kept in the office of the authorized loan and transfer agent of the Commonwealth for the registration of any bonds of the Commonwealth according to the terms and conditions of issue specified by the issuing officials under section 307(d). Bonds issued without interest coupons attached shall be registered in the registry books kept by the authorized loan and transfer agent of the Commonwealth.

Section 315. Voting requirements.

If this chapter requires an action to be taken or a decision to be made by the issuing officials and the three officers shall not be able to agree unanimously, the action or decision of the Governor and either the Auditor General or State Treasurer shall be binding and final.

Section 316. Appropriation.

The money received by the Commonwealth from the issuance and sale of bonds and notes pursuant to this chapter and any debt-authorizing act adopted after July 23, 1984, shall be appropriated by the General Assembly from the Capital Facilities Fund in the debt-authorizing acts for the purposes set forth in those acts.

Section 317. Appropriation for and limitation on redevelopment assistance capital projects.

(a) Appropriation.—The amount necessary to pay principal of and interest on all obligations issued to provide funds for redevelopment assistance capital projects is hereby appropriated from the General Fund and shall be transferred to the Capital Debt Fund upon authorization by the Governor.

(b) Limitation.—The maximum amount of redevelopment assistance capital projects undertaken by the Commonwealth for which obligations are outstanding shall not exceed, in aggregate, \$1,200,000,000.

Section 318. Funding and administration of redevelopment assistance capital projects.

(a) Officers.—The Secretary of the Budget, in consultation with the Secretary of Community and Economic Development, shall approve or disapprove redevelopment assistance capital projects.

(b) Time period.—State funding for approved redevelopment assistance capital projects shall be paid over not less than a 36-month period unless the Secretary of the Budget authorizes a shorter period.

(c) Costs.—Fees for professional services incurred for the design and construction of redevelopment assistance capital projects shall be paid from non-State funds. Land acquisition is a permissible State-funded expenditure if the acquisition cost is supported by an appraisal done by a certified appraiser.

(d) Proportion.—Expenditure of State and non-State funds shall be made on a proportional basis for direct land and building acquisition costs and construction expenses.

(e) Verification.—Redevelopment assistance capital project cost estimates must be verified by the Office of the Budget or its designated agent before final approval is given to a project application. Cost estimates include total project cost, projected use for State and non-State funds and a year-by-year schedule of costs for the entire project construction phase.

(f) Bids.—The solicitation of a minimum of three written bids is required for all general contracted work in redevelopment assistance capital projects.

(g) Review and audit.—Redevelopment assistance capital projects shall be reviewed at regular intervals by the Office of the Budget or its designated agent during the funding phase to ensure financial and program compliance. A final closeout audit shall be performed by the Office of the Budget or its designated agent for all projects.

(h) Fee.—To pay for administrative expenses related to redevelopment assistance capital projects funded by Commonwealth general obligation bonds, the Office of the Budget shall charge a fee against proceeds from bonds and notes which were sold to finance construction or acquisition costs of projects.

CHAPTER 5 SPORTS FACILITIES FINANCING

Section 501. 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:

“Baseline tax amount.” The average of taxes referred to in section 504(7)(i) paid to the Commonwealth in 1996, 1997 and 1998.

“Contracting authority.” An authority created pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, for the purpose of constructing or renovating a facility or other authority established under the laws of this Commonwealth which is eligible to apply for and receive redevelopment assistance capital grants under Chapter 3 under a contract with the office to receive Commonwealth grants under this chapter.

“Contracting municipality.” A city, county, township, town or borough which contracts with the office to receive Commonwealth funds to construct or renovate a facility.

“Facility.” A stadium, arena or other place owned or leased by a professional sports organization at which a professional athletic event is conducted in the presence of individuals who pay admission to view the event. The term includes a facility to be constructed as well as an existing facility.

“Office.” The Office of the Budget.

“Professional sports organization.” A sole proprietorship, corporation, limited liability company, partnership or association that:

(1) owns a professional major league baseball or national football franchise; and

(2) conducts professional athletic events of the franchise at a facility.

Section 502. Commonwealth funds.

The receipt of grants of Commonwealth funds by a contracting municipality or contracting authority under this act to finance any cost related to the construction or renovation of a facility shall be subject to the requirements of this chapter.

Section 503. Eligibility.

In order for a facility to qualify for grants of Commonwealth funds, the professional sports organization utilizing the facility must certify that:

(1) it maintains its headquarters, principal business offices, training facilities and camps, except baseball spring training, and related enterprises and activities, except minor league activities, in this Commonwealth;

(2) except for a sole proprietorship, it is incorporated, organized or otherwise created under the laws of this Commonwealth; and

(3) it will continue to comply with the certifications under paragraphs (1) and (2) for the duration of the lease under section 504(1) or for the initial term of the debt, whichever is longer.

Section 504. Requirement.

In order for grants of Commonwealth funds to be used to construct or renovate a facility, the contracting municipality or contracting authority must contract with the professional sports organization to ensure compliance by the professional sports organization with the following terms and conditions:

(1) Agreement by the professional sports organization to remain and conduct professional sporting events in the facility for the duration of the lease or for the term of any debt of the Commonwealth, whichever is longer, but in no event longer than 29.5 years. The contract shall include agreement by the professional sports organization that if the agreement to remain and conduct professional sporting events is violated, the contracting municipality or contracting authority shall seek specific performance of the agreement to remain and conduct professional sporting events or receive a payment in the amount set forth in the agreement between the contracting municipality or contracting authority and the professional sports organization and the amount equal to the Commonwealth's principal contribution under this act to the construction or renovation of the facility.

(2) Establishment of a procedure to provide written notice by the professional sports organization to the contracting municipality or contracting authority and the Commonwealth of any sale, transfer or relocation of its sports franchise or team immediately upon entering into any commitment to sell, transfer or relocate the sports franchise or team.

(3) Agreement that if the professional sports organization sells or transfers its sports franchise or team, the purchaser or transferee shall be bound by and shall contract to be subject to the same terms and conditions required by this chapter as a condition of the sale.

(4) Agreement that all costs of design and construction of a new or renovated facility which are due to delays or which exceed the projected costs set forth in the financial plan or contract with the office shall be the responsibility of the contracting municipality or contracting authority or the professional sports organization.

(5) Agreement that during the term of the lease for the facility, the professional sports organization or the contracting municipality or contracting authority shall be responsible for all capital improvements to the facility and for all operating expenses relating to the use of the facility, including security, cleaning, insurance, maintenance and utilities.

(6) Agreement to set aside a specified minimum number of days, at reasonable times throughout the year, to be available for the use of the facility by the contracting municipality or contracting authority or by the Commonwealth. Under this agreement, the Commonwealth shall receive the same number of days and be entitled to the same terms as the contracting municipality or contracting authority.

(7) Agreement to make an additional rental payment of \$25,000,000 reduced by available credits under subparagraphs (i) through (iii) in the tax year immediately following the expiration of the first ten-year period of occupancy or lease of the facility and at the expiration of every ten-year period thereafter. The professional sports organization shall pay the additional rental payment to the contracting municipality or contracting authority, which shall remit the additional rental payment to the Commonwealth. The additional rental payment made by the professional sports organization shall be reduced by the following credits:

(i) The credits available for the first ten-year period of occupancy or lease shall be amounts paid to the Commonwealth which exceed the product of the baseline tax amount multiplied by 7.5. The credits available for each subsequent ten-year period of occupancy shall be the amounts paid to the Commonwealth which exceed the product of the baseline tax amount multiplied by 10. Available credits include all of the following:

(A) An amount equal to all corporate net income tax, capital stock and franchise tax and personal income tax related to the ownership and operation of the professional sports organization.

(B) An amount equal to:

(I) all personal income tax withheld from its employees by the professional sports organization;

(II) all personal income tax withheld from the employees of any provider of events at or services to, or any operator of an enterprise in, a facility or facility complex; and

(III) all personal income tax to which the Commonwealth would be entitled from performers or other participants, including visiting teams, at an event or activity at the facility.

(C) An amount equal to all sales and use tax related to the operation of the professional sports organization and the facility and enterprises developed as part of the facility complex. This clause includes sales and use tax paid by any provider of events or activities at or services to a facility, including sales and use tax paid by vendors and concessionaires and contractors at the facility.

(D) An amount equal to all tax paid, by the professional sports organization or by any provider of events or activities at or services to a facility, to the Commonwealth related to the sale of any liquor, wine or malt or brewed beverage in the facility or facility complex.

(E) The amount paid by the professional sports organization or by any provider of events or activities at or services to a facility or facility complex of any new tax enacted by the Commonwealth following the effective date of this chapter.

(ii) In addition to the credits available under subparagraph (i), the professional sports organization may credit an amount equal to one-third of the following, incurred prior to the occupancy or lease of the facility:

(A) all personal income tax withheld from personnel by the professional sports organization or by a contractor or other entity involved in the construction or renovation of the facility; and

(B) sales and use tax paid on materials and other construction costs, whether withheld or paid by the professional sports organization or other entity, directly related to the construction or renovation of the facility.

(iii) To the extent the amount of the credits available for a specific ten-year period under subparagraphs (i) and (ii) exceeds \$25,000,000, the excess may be carried over and added to the amount of credits claimed under subparagraphs (i) and (ii) for the following ten-year period. Any excess credit still remaining shall be carried over to subsequent ten-year periods until it is exhausted or until the expiration of this chapter under section 509, whichever is sooner.

(iv) Payments shall be made by the professional sports organization and remitted by the contracting municipality or contracting authority at a time and in a manner, including required documentation of all credits, as the office prescribes. This subparagraph includes annual reconciliation of all credits under subparagraphs (i) through (iii). All tax records and information shall be subject to all confidentiality protections provided by the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971; however, the Department of Revenue shall provide records and information to the office as necessary for the office to enforce this chapter.

(8) An agreement that, upon sale of the facility or the expiration or termination of the lease at the facility, the Commonwealth shall have an option to purchase for \$1 a one-third interest in the facility.

Section 505. Other agreements.

The contracting municipality or the contracting authority and the professional sports organization may enter into all other agreements necessary and appropriate for the construction, renovation and operation of the facility. The contracting municipality or the contracting authority shall enter into all contracts with the office required to receive Commonwealth funds.

Section 506. Report.

The office shall file a report every ten years to the General Assembly regarding the additional rental payments under this chapter.

Section 507. Financial commitment.

The contracting municipality or contracting authority and the professional sports organization must provide to the office all of the following:

- (1) A financial plan for all funding related to the construction or renovation of the facility, to include details regarding the financial commitment of the parties to the project.
- (2) An economic development plan for the area surrounding the facility.
- (3) A plan to provide affordable seating within a portion of the facility.
- (4) A representation from the contracting municipality or contracting authority that tax revenues to the Commonwealth will be increased and a description of how the grant of Commonwealth funds will provide the increase.

Section 508. Enforcement and penalties.

(a) Injunction.—The Commonwealth may enjoin a violation of section 504.

(b) Withhold funding.—The Commonwealth has the right to withhold funding under this chapter and to exercise all rights and remedies at law or in equity for any of the following:

- (1) Failure of a professional sports organization to comply with the provisions of this chapter in a timely and appropriate manner.
- (2) A violation of a covenant under any agreement with or for the benefit of the Commonwealth relating to the construction or renovation or use of the facility.
- (3) Any other violation of law applicable to the construction or renovation or use of the facility.

(c) Civil penalty.—A person that intentionally, recklessly or negligently violates this chapter shall be subject to a civil penalty of up to \$100,000 per violation.

(d) Criminal penalty.—A person that intentionally or knowingly provides false or fraudulent information or makes a material misrepresentation under this chapter commits a misdemeanor of the third degree.

Section 509. Expiration.

This chapter shall cease to apply to each participating professional sports organization 30 years following the occupancy or lease of the facility.

Section 510. Scope.

This issuance of grants under this chapter is subject to Chapter 3.

CHAPTER 51
MISCELLANEOUS PROVISIONS

Section 5101. Repeals.

(a) Absolute.—Article XVI-B of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, is repealed.

(b) General.—All other acts and parts of acts are repealed insofar as they are inconsistent with Chapter 3.

Section 5102. Effective date.

This act shall take effect immediately.

APPROVED—The 9th day of February, A.D. 1999.

THOMAS J. RIDGE