

vehicle or tractor in violation of such restrictions.

Penalty.—Any person violating the provisions of subsection (b) of this section shall upon summary conviction before a magistrate be sentenced to pay a fine of ten dollars (\$10.00) and costs of prosecution, and, in default of payment thereof, shall undergo imprisonment for not more than five (5) days.

Section 2. This act shall take effect immediately.

APPROVED—The 18th day of August, A. D. 1967.

RAYMOND P. SHAFER

No. 102

AN ACT

SB 411

Providing for the incorporation as public instrumentalities of the Commonwealth and as bodies corporate and politic of industrial development authorities for municipalities, counties and townships; prescribing the rights, powers and duties of such authorities hereafter incorporated; authorizing such authorities to acquire, by gift or purchase, to construct, improve and maintain industrial development projects, and to borrow money and issue bonds therefor; providing for the payment of such bonds and giving security therefor, and prescribing the rights of the holders of such bonds; authorizing the lease or sale of industrial development projects to industrial, manufacturing or research and development enterprises; authorizing any county, municipality or township to transfer or convey to such authorities, any facilities or property available for industrial development projects; exempting the property and securities of such authorities from taxation; authorizing such authorities to enter into contracts with and to accept grants from the Federal Government or any agency thereof; and providing for approval by the Secretary of Commerce of the proceedings relating to industrial development projects of such authorities.

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

Section 1. This act shall be known and may be cited as the "Industrial Development Authority Law."

Section 2. Findings and Declaration of Policy.—It is hereby determined and declared as a matter of legislative finding:

(1) That economic insecurity due to unemployment is at any time a serious menace to the health, safety, morals and general welfare of the people of the Commonwealth and that a high level of unemployment and lack of business opportunity are threats to the strength and permanence of American political and economic institutions and the philosophy of freedom on which those institutions are based;

(2) That a minimum level of unemployment and a maximum level

of business opportunity can best be provided by the promotion, attraction, stimulation, rehabilitation and revitalization of industry, manufacturing and research and development in the Commonwealth;

(3) That the present and prospective health, safety, morals and general welfare of the people of the Commonwealth require as a public purpose the promotion and development of new, expanded and rehabilitated industrial, manufacturing and research and development enterprises;

(4) That the creation and operation of The Pennsylvania Industrial Development Authority has proved highly successful in attracting industry and the resultant employment and business opportunities to critical areas of unemployment within the Commonwealth;

(5) That to continue and further the successful program of The Pennsylvania Industrial Development Authority, it is necessary to provide additional means of financing the promotion and development of new, expanded and rehabilitated industrial, manufacturing and research and development facilities, including in conjunction therewith the financing of machinery and equipment;

(6) That many existing industrial, manufacturing and research and development enterprises throughout the Commonwealth could become more competitive and could expand more rapidly if such additional means of financing were available for modern plant facilities and modern machinery and equipment;

(7) That additional industrial, manufacturing and research and development facilities could be attracted to the Commonwealth if such additional means of financing were available to construct, rehabilitate and expand industrial plants and in conjunction therewith equip the same with modern machinery and equipment;

Therefore, it is hereby declared to be the policy of the Commonwealth of Pennsylvania to promote the health, safety, morals, employment, business opportunities and general welfare of the people thereof by providing for the creation of industrial development authorities which shall exist and operate as public instrumentalities of the Commonwealth for the public purpose of alleviating unemployment, maintaining employment at a high level, and creating and developing business opportunities by the construction, improvement, rehabilitation, revitalization and financing of industrial, manufacturing and research and development enterprises. Such purpose is hereby declared to be a public purpose.

Section 3. Definitions.—As used in this act:

(1) “Authority” or “industrial development authority” means a public instrumentality of the Commonwealth and a body politic and corporate, created pursuant to this act.

(2) “Board” means the governing body of an authority.

(3) “Bonds”¹ mean and² include the notes, bonds, refunding notes and bonds and other evidence of indebtedness or obligations which

¹ “means” in original.

² “includes” in original.

each authority is authorized to issue pursuant to section 6 (b) (10) of this act.

(4) "Construction" means and includes acquisition by deed, lease, sale, gift or otherwise, and construction, and the term "to construct" means and includes to acquire by deed, lease, sale, gift or otherwise, and to construct, all in such manner as may be deemed desirable.

(5) "Cost of the industrial development project" or "cost of the project" or "cost" means and includes the cost of construction, the cost of acquisition of all structures, lands and other property rights and interests in land necessary to the project, the cost of demolishing, removing or relocating any buildings or structures on lands acquired or to be acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of sewage treatment, industrial waste treatment and air pollution control facilities and of all labor, materials, machinery and equipment, financing charges, interest on all bonds prior to and during construction, and for a period of six months thereafter, cost of engineering, financial and legal services, plans, specifications, studies, surveys necessary or incidental to determining the feasibility or practicability of constructing an industrial development project, administrative expenses, reserves for interest and for extensions, enlargements, additions and improvements, and such other expenses as may be necessary or incidental to the construction of industrial development projects and the placing of the same in operation.

(6) "Federal agency" means and includes the United States of America, the President of the United States of America, and any department of or corporation, agency or instrumentality heretofore or hereafter created, designated or established by the United States of America.

(7) "Governmental body" or "governmental bodies" means the body or board authorized by law to enact ordinances or adopt resolutions for the particular municipality.

(8) "Improvement" means and includes extension, enlargement and other improvement; and the term "to improve" means and includes to extend, to enlarge, and to otherwise improve all in such manner as may be deemed desirable.

(9) "Industrial enterprise" means an enterprise other than a mercantile, commercial or retail enterprise, which by virtue of its size requires substantial capital and which by its nature and size has created or will create substantial employment opportunities. The term "industrial enterprise" may include warehouse, distribution and national and regional headquarters facilities.

(10) "Industrial development project" or "project" means any building or facility or combination or part thereof occupied or utilized by an industrial, manufacturing, or research and development enterprise located within or without or partially within or without the municipality creating the authority, now existing or hereafter acquired or constructed by the authority pursuant to the terms of this act, including any or all buildings, improvements, additions, exten-

sions, replacements, appurtenances, lands, rights in land, water rights, franchises, machinery, equipment, furnishings, landscaping, utilities, railroad spurs and sidings, wharfs, approaches and roadways necessary or desirable in connection therewith or incidental thereto.

(11) "Industrial occupant" means any person, partnership, or corporation engaged in industrial, manufacturing or research and development activities and determined by the authority to be financially responsible to assume all obligations prescribed by the authority and this act in the leasing, sale and operation of an industrial development project.

(12) "Manufacturing enterprise" means an enterprise which is engaged in the giving of new shapes, new qualities or new combinations to matter by the application of skill and labor thereto through the use of equipment or otherwise.

(13) "Municipality" means any county, city, town, borough or township of the Commonwealth of Pennsylvania.

(14) "Research and development enterprise" means an enterprise for the discovery of new and the refinement of known substances, processes, products, theories and ideas, but shall not include activities directed primarily to the accumulation or analysis of commercial, financial or mercantile data.

(15) "Secretary" means the Secretary of Commerce of this Commonwealth.

Section 4. Method of Incorporation.—(a) Whenever the governmental body of any municipality shall desire to organize an authority under this act, it shall adopt a resolution or ordinance signifying its intention to do so.

Thereafter, the governmental body of such municipality shall cause a notice of such resolution or ordinance to be published at least one time in the legal periodical of the county in which such authority is to be organized, and at least one time in a newspaper, published and of general circulation, in such county. Said notice shall contain a brief statement of the substance of said resolution or ordinance, including the substance of articles of incorporation making reference to this act, and shall state that on a day certain, not less than three days after publication of said notice, articles of incorporation of the proposed authority will be filed with the Secretary of the Commonwealth of Pennsylvania. The publication of such notice as aforesaid shall be the only publication required, any law to the contrary notwithstanding.

(b) On or before the day specified in said notice the governmental body shall file with the Secretary of the Commonwealth articles of incorporation together with proof of publication of the notice as aforesaid. Said articles of incorporation shall set forth:

- (1) The name of the authority;
- (2) A statement that such authority is formed under this act;
- (3) The name of the incorporating municipality, together with the names and addresses of the members of its governmental body;
- (4) The names, addresses and term of office of the first members

of the board of said authority; and

(5) The term of existence of the authority which shall not exceed fifty years; all of which matters shall be determined in accordance with the provisions of this act. Said articles of incorporation shall be executed by the governmental body by its proper officers and under its municipal seal.

(c) The Secretary of the Commonwealth shall forthwith, but not prior to the day specified in the aforesaid notice, and when all proper fees and charges have been paid, file the articles and issue a certificate of incorporation, a copy of which shall be delivered to the secretary. Upon the issuance of such certificate of incorporation by the Secretary of the Commonwealth, the corporate existence of said authority shall begin. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been incorporated.

Section 5. Amendment of Articles.—(a) An authority, in the manner hereinafter provided, may, from time to time, amend its articles:

(1) To adopt a new name;

(2) To add a provision therein increasing its term of existence to a date not exceeding fifty years from the date of approval of the articles of amendment or to modify any provision thereof limiting its term of existence by increasing such term to such a date;

(3) To increase or decrease the number of members of the board of the authority and to revise the terms of office of such members, all in such manner as shall not be inconsistent with the provisions of section 9 of this act.

(b) 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 governmental body of the municipality which created 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 therein set forth in full, or that any provision thereof be amended so as to read as therein set forth in full, or that the matter stated in the resolution be added to or stricken from the articles. After the amendments have been submitted to the governmental body it shall adopt or reject such amendment by resolution or ordinance.

(c) After an amendment has been adopted by the governmental body, articles of amendment shall be executed by the governmental body by its proper officers and under its municipal seal and shall set forth:

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

(2) A statement that the authority was formed pursuant to this act and the date of the issuance of its certificate of incorporation;

(3) The resolution or ordinance of the governmental body adopting the amendment;

(4) The amendment adopted by the governmental body which shall be set forth in full.

(d) The governmental body shall advertise its intention to file articles of amendment with the Secretary of the Commonwealth in the manner prescribed in section 4 of this act in the case of the formation of 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 act;
- (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) The articles of amendment and proof of the advertisement shall be filed by the governmental body with the Secretary of the Commonwealth. The Secretary of the Commonwealth shall on the day specified in the advertisement, when all fees and charges have been paid, file the articles and issue to the municipality a certificate of amendment. A copy of such certificate of amendment shall be delivered to the secretary.

Section 6. Purposes and Powers; General.—(a) Every authority incorporated under this act shall be a public instrumentality of the Commonwealth and a public body corporate and politic, and shall be for the purpose of acquiring, holding, constructing, improving, maintaining, owning, financing and leasing, either in the capacity of lessor or lessee, industrial development projects. In the event of default by an industrial occupant, an authority may, in its discretion, do any and all acts necessary or convenient to protect the holders of any bonds issued to establish such project or to maintain and preserve the project pending the remedying of such default or defaults or the obtaining of a new industrial occupant.

(b) Every authority is hereby granted, and shall have and may exercise all powers necessary or convenient for the carrying out of the aforesaid purposes, including but without limiting the generality of the foregoing, the following rights and powers:

(1) To have existence for a term of fifty years and for such further period or periods as may be provided in articles of amendment approved under subsection (e) of section 5.

(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, own, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein necessary or convenient for carrying out the purposes of the authority, and to sell, option, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it.

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

(6) To make bylaws for the management and regulation of its

affairs.

(7) To appoint officers, agents and employes, to prescribe their duties and to fix their compensation.

(8) To enter into acquisition agreements providing for (i) the construction of industrial development projects by either the authority or the industrial occupant; (ii) the financing of industrial development projects to be constructed initially by an industrial occupant if prior to the commencement of construction an agreement as to financing is entered into between the authority and the industrial occupant; (iii) the financing of improvements to existing industrial development projects if the existing project is owned by the authority or will be conveyed in fee to the authority, free and clear of all encumbrances and without consideration; and (iv) the leasing or sale of the industrial development projects to the industrial occupants as hereinafter provided.

(9) To enter into agreements of lease or sale with industrial occupants providing, inter alia, (i) for the leasing or sale of industrial development projects to the industrial occupants for a term of years not to extend beyond the term of existence of the authority; (ii) for a rental or other payments sufficient to amortize the principal, interest and premium, if any, of all bonds and other obligations of the authority incurred to pay the costs of the industrial development project to be leased or sold; (iii) for the industrial occupant to pay to the authority or to otherwise assume and pay all other costs of maintaining and operating the project; (iv) provisions, if deemed desirable, that the industrial occupant of a project pursuant to a lease shall have the options to renew such lease or to purchase any or all of such project, or upon payment of all bonds and other obligations of the authority incurred with respect to such project, the authority may convey any part or all of said project to the industrial occupants with or without consideration; and (v) such other provisions as are customary in such leases or agreements of sale or as may be deemed necessary or convenient by the authority.

(10) To borrow money, make and issue bonds of the authority, said bonds to have a maturity date not longer than forty years from the date of issue: Provided, That no bonds shall have a maturity date later than the life of the authority, and to secure the payment of such bonds or any part thereof by pledge, mortgage or deed of trust of all or any part of its property and of its revenues and receipts, and to make such agreements with the purchasers or holders of such bonds, or with others in connection with any such bonds, whether issued or to be issued, as the authority shall deem advisable, and in general to provide for the security for said bonds by mortgage, pledge or otherwise and for the rights of the holders thereof.

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

(12) 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, Commonwealth of Pennsylvania or its agencies or instrumentalities, municipality, school district, bank or other financial institution, corporation or other authority.

(13) To pledge, mortgage, hypothecate or otherwise encumber all or any part of the property, real or personal, including but not limited to the revenues or receipts of the authority as security for all or any of the obligations of the authority.

(14) 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 act or any other acts.

(c) An authority created hereunder shall have no power at any time or in any manner to pledge the general credit or taxing power of the Commonwealth of Pennsylvania or any political subdivision, and the obligations of the authority shall be limited as provided in section 7 (a) hereof. The bonds of the authority shall on the face thereof clearly set forth the foregoing limitation.

(d) An authority created hereunder shall have no power to:

(1) Construct or finance or aid in the construction or financing of an industrial development project which shall cause the removal of a manufacturing, industrial or research plant, facility or establishment from one area of the Commonwealth of Pennsylvania to another area of the Commonwealth.

(2) Acquire existing industrial development projects under circumstances which would be primarily for the purpose of directly or indirectly refinancing the obligations of or providing working capital or other funds for any industrial, manufacturing or research enterprise or any parent, subsidiary, affiliate or shareholder thereof, which enterprise, or any parent, subsidiary, affiliate or shareholder thereof, would thereafter continue to occupy or utilize said project; however, this limitation shall not apply to refinancing in order to improve an existing project now financed by the authority or by any authority or nonprofit corporation heretofore recognized as agency or an instrumentality of the Commonwealth or any municipality thereof.

(3) Enter into any agreement to finance the acquisition or construction of an industrial development project in excess of the cost of the project.

(4) Finance machinery or equipment except in conjunction with the construction of a new, or the improvement of an existing industrial development project; or

(5) Engage in business, trade or commerce for a profit as lessee of a project, or otherwise.

Section 7. Purposes and Powers; Bonds.—(a) An authority shall have the power to issue bonds for any of its corporate purposes, provided, however, the principal, interest and other charges thereon are payable solely and exclusively (i) from the income, revenues and property of the project financed, in whole or in part, with the proceeds of such bonds; (ii) from the income and revenues of certain desig-

nated projects whether or not they were financed, in whole or in part, with the proceeds of such bonds; or (iii) from its revenues generally. (b) The bonds of any authority shall be authorized by resolution of the board thereof, shall be of such series, bear such date or dates, mature at such time or times, not exceeding forty years from their respective date, bear interest at such rate or rates, payable at least semi-annually, be in such denominations, be in such form, either coupon or fully registered without coupons, carry such registration, exchangeability and interchangeability privileges, be payable in medium of payment and at such place or places, be subject to such terms of redemption, with or without premium, and be entitled to such priorities in the revenues or receipts of such authority as such resolution or resolutions may provide. The bonds shall be signed by or shall bear the facsimile signature of such officers as the authority shall determine, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of the treasurer of the authority, all as may be prescribed in such resolution or resolutions. Any such bonds may be issued and delivered, notwithstanding that one or more of the officers signing such bonds or the treasurer whose facsimile signature shall be upon the coupon, shall have ceased to be such officer or officers at the time when such bonds shall actually be delivered. Said bonds may be sold at public or private sale for such price or prices as the authority shall determine. Pending the preparation of the definitive bonds, interim receipts may be issued to the purchaser or purchasers of such bonds, and may contain such terms and conditions as the authority may determine. Any bond reciting in substance that it has been issued by an authority to aid in the financing of a project to accomplish the public purposes of this act shall be conclusively deemed in proceedings involving the validity or enforceability of such bond or security therefor, to have been issued for such purpose.

(c) Any resolution or resolutions authorizing any bonds may contain provisions which shall be part of the contract with the holders thereof, as to (i) pledging the full faith and credit of the authority (but not of the Commonwealth of Pennsylvania or any political subdivision thereof) for such obligations, or restricting the same to all or any of the assets or to all or any of the revenues or receipts of the authority from all or any projects or properties; (ii) the construction, improvement, operation, extension, enlargement, maintenance and repair of the project and the duties of the authority and the industrial occupant with reference thereto; (iii) the terms and provisions of the bonds; (iv) limitations on the purposes to which the proceeds of the bonds then or thereafter to be issued, or of any loan or grant by a Federal agency may be applied; (v) the rentals and other charges for use of the project; (vi) the setting aside of reserves or sinking funds and the regulation and disposition thereof; (vii) limitations on the issuance of additional bonds; (viii) the terms and provisions of any deed of trust, mortgage or indenture securing the bonds, or under which the same may be issued, and (ix) any

other or additional agreements with the holders of the bonds.

(d) Any authority may enter into any deeds of trust, indentures, mortgages or other agreements, with any bank or trust company, including any Federal agency, as security for such bonds, and may assign and pledge the assets or all or any of the revenues or receipts of the authority thereunder. Such deed of trust, indenture, mortgage or other agreement, may contain such provisions as may be customary in such instruments, or as the authority may authorize, including (but without limitation) provisions as to (i) the construction, improvement, operation, maintenance and repair of any project, and the duties of the authority and the industrial occupant with reference thereto; (ii) the application of funds and the safeguarding of funds on hand or on deposit; and (iii) the rights and remedies of the trustee and the holders of the bonds, (which may include restrictions upon the individual right of action of such bondholders); and (iv) the terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

(e) Said bonds shall have all the qualities of negotiable instruments under the law merchant and the Uniform Commercial Code of the Commonwealth of Pennsylvania.

(f) No bonds shall be issued and sold and the construction of a project shall not be commenced until the proceedings to be undertaken in respect of the issuance and sale of the bonds and the construction of the project have been first approved by the secretary. The chairman of the authority shall cause to be certified under seal of the authority and delivered to the secretary such documents relating to the proceedings as may be necessary and as may be required by the secretary to enable him to determine that:

- (1) The project does not violate section 6 (d) hereof;
- (2) The lease or agreement of sale is in accordance with section 6 (b) (9) hereof;
- (3) The proceedings are in conformity with this act, and
- (4) The industrial development project will accomplish the public purposes of this act.

If such proceedings are found to be in conformity with this act, the secretary shall within twenty days after receipt thereof approve the same and certify his approval to the authority.

If, upon examination, the secretary shall find that such proceedings are not in accordance with this act, he shall disapprove the same and shall within twenty days after receipt thereof certify his disapproval to the authority; thereafter, it shall be unlawful for such authority to issue any bonds upon such proceedings or to commence construction of the project unless the proceedings are corrected and as corrected have been approved by the secretary. If the secretary shall not have approved or disapproved the proceedings within such twenty days the same shall be deemed to have been approved. The decision of the secretary shall be final.

Section 8. Remedies of Bondholders.—(a) The rights and the remedies herein conferred upon or granted to the bondholders, shall

be in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing for the issuance of bonds, or by any deed of trust, indenture, mortgage or other agreement under which the same may be issued. In the event that the authority shall default in the payment of principal of, or interest on, any of the bonds after the said principal or interest shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the authority shall fail or refuse to comply with the provisions of this act, or shall default in any agreement made with the holders of the bonds, the holders of twenty-five percent in aggregate principal amount of the bonds then outstanding, by instrument or instruments filed in the office of the recorder of deeds of the county and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the bondholders for the purpose herein provided.

(b) Such trustee, and any trustee under any deed of trust, indenture or other agreement, may, and upon written request of the holders of twenty-five percent (or such other percentage as may be specified in any deed of trust, indenture, mortgage or other agreement aforesaid) in principal amount of the bonds then outstanding, shall in his or its own name:

(1) By mandamus or other suit, action or proceeding at law, or in equity, enforce all rights of the bondholders, including the right to require the authority to collect rentals and other charges, in respect of any agreement as to or pledge of the revenues or receipts of the authority, and to require the authority to carry out any other agreements with or for the benefit of the bondholders, and to perform its and their duties under this act.

(2) Bring suit upon the bonds.

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

(4) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders.

(5) By notice in writing to the authority, declare all bonds due and payable, and if all defaults shall be made good, then with the consent of the holders of twenty-five percent (or such other percentage as may be specified in any deed of trust, mortgage, indenture or other agreement aforesaid) of the principal amount of the bonds then outstanding, to annul such declaration and its consequences.

(c) The court of common pleas of the county shall have jurisdiction of any suit, action or proceedings, by the trustee on behalf of the bondholders. Any trustee appointed by a court, or a trustee acting under a deed of trust, indenture or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may enter and take possession of the facilities of the authority or any part or parts thereof, the revenues or receipts from which are or may be applicable to the payment of the bonds so in default, and operate and maintain

the same, and collect and receive all rentals and other revenues thereafter arising therefrom in the same manner as the authority or the board might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by a trustee, the fees, counsel fees and expenses of such trustee, and of the receiver if any, and all costs and disbursements allowed by the court shall be a first charge on any revenues and receipts derived from the facilities of the authority, the revenues or receipts from which are or may be applicable to the payment of the bonds so in default. A trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or in any deed of trust, mortgage, indenture or other agreement or incident to the general representation of the bondholders in the enforcement and protection of their rights.

Section 9. Governing Body.—(a) The powers of each authority shall be exercised by a board composed as follows: the board shall consist of such number of members not less than five as shall be set forth in the articles of incorporation or amendment thereto. Except in cities operating under a duly adopted charter, the governmental body of such municipality shall appoint the members of the board, whose terms of office shall commence on the date of 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 January first next succeeding the date of incorporation or amendment, 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 from the January first next succeeding. Thereafter, whenever a vacancy has occurred or is about to occur by reason of the expiration of the term of any member, the said governmental body shall appoint a member of the board, except in cities operating under a duly adopted charter, for a term of five years from the date of expiration of the prior term to succeed the member whose term has expired or is about to expire. In cities operating under a duly adopted charter the members of the board shall be appointed and the members shall hold office in accordance with the provisions of said charter.

(b) Members shall hold office until their successors have been appointed, and may succeed themselves. Members of the board of any authority organized or created pursuant to this act shall receive no compensation for their services, but shall be reimbursed for necessary traveling and other expenses incurred in the performance of their duties. Except in cities operating under a duly adopted charter where removal shall be in accordance with the said charter, a member may be removed with or without cause by the governmental body or by the appointing authority. If a vacancy shall occur by reason of the death, disqualification, resignation or removal of a member, a successor shall be appointed to fill his unexpired term in the manner provided in section 9 (a).

(c) A majority of the members shall constitute a quorum of the board for the purpose of organizing the authority and conducting the business thereof and for all other purposes, and all action may be taken by a vote of a majority of the members present, unless in any case 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 employes 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 an authority shall give bond in such sum as shall be approved by the board, the premium for which shall be paid by the authority.

Section 10. Moneys of The Authority.—All moneys of any authority, from whatever source derived, shall be paid either to the treasurer of the authority or to a bank or trust company with which the authority may have entered into an agreement pursuant to section 7 (c) hereof which shall deposit them in one or more special accounts. Such special accounts to the extent the same is not insured shall be continuously secured by a pledge of direct obligations of the United States of America, of the Commonwealth or as otherwise provided by law having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account. Such securities shall either be deposited with the treasurer, or be held by a trustee or agent satisfactory to the authority. All banks and trust companies are authorized to give such security for such deposits. The moneys in said accounts shall be paid out on the warrant or other order of the chairman of the authority, or of such other person or persons as the authority may authorize to execute such warrants or orders. Every authority shall file an annual report with the Department of Commerce and with the municipality creating the authority on forms prepared and distributed by the Department of Commerce, which shall make provision for the accounting of revenues and expenses. Every authority shall have its books, accounts and records audited annually in accordance with generally accepted auditing standards by an independent auditor who shall be a certified public accountant or competent public accountant and a copy of his audit report shall be attached to and be made a part of the aforesaid annual report. A concise financial statement shall be published annually, at least once in a newspaper of general circulation in the municipality where the principal office of the authority is located. If such publication is not made by the authority, the municipality shall publish such statement at the expense of the authority. If the authority fails to make such an audit, then the controller, auditors or accountant designated by the municipality, are hereby authorized and empowered

from time to time to examine at the expense of the authority the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other matters relating to its finances, operations and affairs.

The Auditor General of the Commonwealth of Pennsylvania shall have the right to examine the books, accounts and records of any authority.

Section 11. Transfer of Existing Facilities to Authority.—(a) Any municipality may, and it is hereby authorized to sell, lease, grant, convey and transfer to any authority, any facilities, or any interest in real or personal property available for industrial development projects. This section without reference to any other law, shall be deemed complete, the provisions of other laws to the contrary notwithstanding.

Section 12. Competition in Award of Contracts.—(a) All construction, reconstruction, repairs or work of any nature made directly by any authority, where the entire cost, value or amount of such construction, reconstruction, repairs or work, including labor and materials, shall exceed five thousand dollars (\$5,000), except construction, reconstruction, repairs or work done by employes of said authority, or by labor supplied under agreement with any Federal or State agency, with supplies and materials purchased as hereinafter provided, shall be done only under contract or contracts to be entered into by the authority with the lowest responsible bidder upon proper terms, after due public notice has been given asking for competitive bids as hereinafter provided: Provided, however, That where the authority is the legal title holder to the industrial development project, and there exists an agreement whereby an industrial occupant will or can acquire legal title to the said project under the then certain terms and conditions, contracts for construction, reconstruction, repair, or work of any nature, or purchase of machinery and equipment, may be awarded by the industrial occupant without regard to the limitations of this section 12: And provided further, however, That for the purposes of this section 12, "construction" shall not include acquisition of property for industrial development purposes. No contract shall be entered into between an authority and a contractor for construction or improvement or repair of any project or portion thereof, unless the contractor shall give an undertaking with a sufficient surety or sureties approved by the authority, and in an amount fixed by the authority, for the faithful performance of the contract. All contracts of surety shall provide among other things that the contractor entering into a 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 such materials or rendering such services may maintain an action to recover for the same against the obligor in the undertaking, as though such person or corporation was named therein, provided the action is brought within one year after the time the cause of action accrued.

(b) All supplies and materials costing two thousand five hundred dollars (\$2500) or more to be purchased directly by an authority shall be purchased only after due advertisement as hereinafter provided. The authority shall accept the lowest bid or bids, 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) The terms "advertisement" or "due public notice" wherever used in this section, shall mean a notice published at least ten days before the award of any contract, in a newspaper of general circulation published in the municipality where the authority has its principal office, and if no newspaper is published therein then by publication in a newspaper in the county where the authority has its principal office: Provided, That such notice may be waived where the authority determines an emergency exists, and such supplies and materials must be immediately purchased by the said authority.

(d) No member of the authority or officer or employe thereof shall, either directly or indirectly, be a party to or be in any manner interested in any contract or agreement with the authority for any matter, cause or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such authority. If any contract or agreement shall be made in violation of the provisions of this section the same shall be null and void and no action shall be maintained thereon against such authority.

(e) Subject to the aforesaid, any authority may (but without intending by this provision to limit any powers of such authority) enter into and carry out such contracts, or establish or comply with such rules and regulations concerning labor and materials and other related matters in connection with any project or portion thereof, as the authority may deem desirable, or as may be requested by any Federal agency that may assist in the financing of such project or any part thereof.

(f) The provisions of this section 12 shall not apply in respect of the construction of any project or the purchase of any equipment, materials or supplies which the authority may have had transferred to it upon completion, by purchase or otherwise, by an industrial occupant or any other person or corporation.

Section 13. Limitation of Powers.—The Commonwealth does hereby pledge to and agree 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 any project or part thereof, that the Commonwealth will not limit or alter the rights hereby vested in the authority until all bonds at any time issued, together with the interest thereon are fully met and discharged. The Commonwealth of Pennsylvania does further pledge to and agree with the United States and any other Federal agency that, in the event that any Federal agency shall construct or

contribute any funds for the construction, extension, improvement or enlargement of any project or any portion thereof, 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 any agreements between the authority and any such Federal agency, and the authority shall continue to have and may exercise all powers herein granted, so long as the same shall be necessary or desirable for the carrying out of the purposes of this act and the purposes of the United States in the construction or improvement or enlargement of the project or such portion thereof.

Section 14. Termination of Authority.—When any authority shall have finally paid and discharged all bonds and the interest due thereon, which shall have been secured by a mortgage on its property or a pledge of any of the revenues or receipts of a project, it shall (subject to any agreements concerning the operation or other disposition of such project) convey such project to the municipality creating the authority. When any authority shall have finally paid and discharged all bonds issued and outstanding and the interest due thereon, or shall have otherwise provided for the payment thereof by the irrevocable deposit of an amount sufficient to pay all sums due, and settled all other claims which may be outstanding against it, it may convey all its property to the municipality creating the authority and may then terminate its existence. A certificate requesting the termination of the existence of the authority shall be submitted to the municipality creating the authority. If the certificate is approved by the municipality, then the certificate endorsed with such approval shall be filed with the Secretary of the Commonwealth who shall then note the termination of existence on the record of incorporation and return the certificate with his approval shown thereon to the board. Thereupon the property of the authority shall pass to the municipality, and the authority shall cease to exist.

Section 15. Exemption From Taxation.—The effectuation of the authorized purpose of authorities created under this act shall and will be in all respects for the benefit of the people of the Commonwealth of Pennsylvania, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions; and, since they will as public instrumentalities of the Commonwealth be performing essential governmental functions in effectuating such purposes, authorities shall not be required to pay any taxes or assessments upon any property acquired or used by them for such purposes, and the bonds issued by any authority, their transfer and the income therefrom, (including any profits made on the sale thereof) shall at all times be free from taxation within the Commonwealth of Pennsylvania.

Section 16. Repealer.—All acts or parts of acts are repealed in so far as they are inconsistent herewith.

Section 17. Effective Date.—This act shall take effect immediately.

APPROVED—The 23rd day of August, A. D. 1967.

RAYMOND P. SHAFER

No. 103

AN ACT

SB 425

Amending the act of June 22, 1931 (P. L. 720), entitled "An act providing for the taking over by the Commonwealth, under certain terms, conditions and limitations, of certain streets in cities of the second class, second class A, and third class as State highways, and for the improvement, construction, reconstruction, resurfacing and maintenance by the Commonwealth of certain defined widths of said streets; imposing duties on such cities and on public utility companies using such streets; providing that no assessment shall be made upon the Commonwealth in the elimination of any grade crossing thereon; authorizing cities, persons, associations, or corporations to enter into agreements with the Commonwealth to bear a portion of the cost of construction or maintenance; providing for the assessment of certain portions of the cost of street improvements on abutting property owners; regulating the replacement of certain facilities of public utility companies; prohibiting the opening of said streets after improvement without a permit, and providing penalty therefor; regulating the maintenance of detours; authorizing the increase of city indebtedness in certain cases; and appropriating money in the Motor License Fund for the purposes of this act," changing a route in Lackawanna County.

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

Section 1. The following route established by the act of June 22, 1931 (P. L. 720), entitled "An act providing for the taking over by the Commonwealth, under certain terms, conditions and limitations, of certain streets in cities of the second class, second class A, and third class as State highways, and for the improvement, construction, reconstruction, resurfacing and maintenance by the Commonwealth of certain defined widths of said streets; imposing duties on such cities and on public utility companies using such streets; providing that no assessment shall be made upon the Commonwealth in the elimination of any grade crossing thereon; authorizing cities, persons, associations, or corporations to enter into agreements with the Commonwealth to bear a portion of the cost of construction or maintenance; providing for the assessment of certain portions of the cost of street improvements on abutting property owners; regulating the replacement of certain facilities of public utility companies; prohibiting the opening of said streets after improvement without a permit, and providing penalty therefor; regulating the maintenance of detours; authorizing the increase of city indebtedness in certain cases; and appropriating money in the Motor License Fund for the purposes of this act," and its amendments, is amended to read: