

## No. 75

## AN ACT

HB 1226

Amending the act of July 20, 1968 (Act No. 217), entitled "An act implementing the provisions of clause (4) of subsection (a) of section 7 of Article VIII of the Constitution of Pennsylvania authorizing and restricting the incurring of certain debt; providing for a capital budget bill; imposing duties upon the Governor, the Auditor General and the State Treasurer; prescribing procedures for the issuance, sale and payment of certain general obligation bonds, the disposition of the proceeds therefrom, and the funding of debt and refunding of bonds; exempting said bonds from State and local taxation; creating certain funds; and providing for certain appropriations," changing certain definitions and further providing for debt authorization, capital projects to be in the capital budget and debt authorizing bill, certificates of the Auditor General, temporary financing, general obligation bonds, the disposition and use of proceeds, capital facilities redemption fund, funding bonds, exemptions and making act permanent.

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

Section 1. Section 1, act of July 20, 1968 (Act No. 217), known as the "Capital Facilities Debt Enabling Act of 1968," is amended to read:

Section 1. Short Title.—This act shall be known and may be cited as the "Capital Facilities Debt Enabling Act [of 1968]."

Section 2. The first paragraph of the definition of "Capital Project" in clause (1) and clauses (5) and (6) of section 2 of the act, clause (1) amended March 26, 1969 (Act No. 4), are amended, and clause (1) is also amended by adding after the definition of "Highway Projects," four new definitions to read:

Section 2. Definitions.—As used in this act—

(1) "Capital Project" means and includes (i) any building, structure, facility, or physical public betterment or improvement; or (ii) any land or rights in land; or (iii) any furnishings, machinery, apparatus, or equipment for any public betterment or improvement; or (iv) any undertaking to construct, repair, renovate, improve, equip, furnish or acquire any of the foregoing, provided that the project is designated in a capital budget as a capital project, has an estimated useful life in excess of [two] *five* years and an estimated financial cost in excess of [seventy-five thousand dollars (\$75,000),] *one hundred thousand dollars (\$100,000)*; provided, that the *one hundred thousand dollars (\$100,000)* limitation shall not apply to original equipment and furnishings for previously authorized public improvement projects and shall include projects to be financed by the incurring of debt, such projects being separated into the following categories:

\* \* \*

"Flood Control Projects" means and includes 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 (P. L. 106), entitled "An act relating to flood control; prescribing the powers and duties of the Water and Power Resources Board of the Department of Forests and Waters in relation to the creation of flood control districts, adoption of plans for flood control works and improvements, carrying into effect of such plans, assistance, aid and cooperation with public and private agencies and the Federal Government in Federal flood control works and improvements, and entering into compacts and agreements with other states for flood control works and improvements; conferring the power of eminent domain; imposing certain charges upon the Commonwealth; providing for appeals; and conferring certain powers on municipalities, counties, and townships, the Department of Highways and the Department of Property and Supplies."*

*"PIDA Projects" means and includes projects of the type which the Pennsylvania Industrial Development Authority is authorized to finance under the provisions of the act of May 17, 1956 (P. L. 1609), known as the "Pennsylvania Industrial Development Authority Act."*

*"Redevelopment Assistance Projects" means and includes projects of the type which the Department of Community Affairs is authorized to finance by capital grants under the provisions of the act of May 20, 1949 (P. L. 1633), known as the "Housing and Redevelopment Assistance Law" and Reorganization Plan No. 2 of 1966.*

*"Site Development Projects" means and includes projects of the type which the Department of Commerce is authorized to finance by site development grants under the provisions of the act of May 6, 1968 (Act No. 61), known as the "Site Development Act."*

\* \* \*

(5) "Construction cost," includes obligations incurred for (i) labor and to contractors, builders, and materialmen in connection with the construction, fabrication or assembly of any capital project; [or] and (ii) for machinery and equipment required for such construction; [or] and (iii) for the restoration of property damaged or destroyed in connection with such construction; [or] and (iv) for the payment of any damages incurred by others incident to or consequent upon such construction, which the Commonwealth or its agency or authority shall be under legal obligations to pay or shall desire to pay in settlement of a disputed claim of liability.

(6) "Financial cost" includes acquisition cost and construction cost where applicable as well as an allocated portion of (i) the fees, expenses, and costs of issuing the obligations, the proceeds whereof are used to finance the project, 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; [or] and (ii) premiums on insurance (if any) in connection with any project during construction, taxes and other municipal or governmental charges, if any, lawfully levied or assessed during

construction, fees and expenses of architects, engineers, [or] *and* other professionals for making preliminary studies, reports, estimates of costs, preparing plans and specifications and inspecting and reviewing the progress of construction, costs of obtaining abstracts of title, title insurance or title opinions; [or] *and* (iii) costs and expenses of preliminary investigations, preplanning, surveys and reports to determine the proper scope, feasibility and probable costs of capital projects to be included in future capital budgets; [or] *and* (iv) costs of administration including the salaries and expenses of administrators, reviewing architects and engineers, construction inspectors, accountants, and legal counsel of the Commonwealth, its agencies or authorities incurred for the proper planning and supervision of the capital projects program.

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Section 3. Sections 3, 4, 6, 7, 8, 10, 11 and 12 of the act are amended to read:

Section 3. Procedures for Capital Budget Bill and Debt Authorizing Legislation.—(a) A capital budget prepared in accordance with this act shall be submitted for each fiscal year by the Governor to the General Assembly in the form of a bill and shall thereafter proceed to consideration as provided in Article III of the Constitution of Pennsylvania.

(b) The capital budget bill shall specifically itemize by brief identifying description and estimated financial cost, the capital projects to be financed from the proceeds of obligations of the Commonwealth [or **its agencies or authorities**] 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. Such projects shall 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 shall 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 [unless stated to be **by the issue of bonds of a specified authority of the Commonwealth**].

(c) [The Governor shall submit the capital budget bill, and one or more additional bills covering those portions of a capital budget constituting the specific itemization of projects, for the fiscal year 1968-1969.] On or before the first day of March, in 1969 and in each succeeding year, the Governor shall submit a capital budget bill for the ensuing fiscal year.

(d) At the time the Governor submits the capital budget bill, or a supplement thereto as aforesaid, he 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) Each debt authorizing bill shall state the category of capital projects to be financed by the debt so authorized, but need not enumerate the capital projects to be financed, shall 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, shall state the estimated useful lives of the capital projects to be financed in such detail as may be requisite where capital projects of varying useful lives are to be combined for financing purposes, and shall state the maximum term of the debt to be incurred.

**[(f) Each capital budget bill and each debt authorizing bill shall state that it is enacted in accordance with the provisions of this act.]**

Section 4. Certificates of the Auditor General.—(a) On or before **[July 16, 1968, and on or before]** each March 1 and **[October 1 thereafter,]** *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 such certificate determined by adding the total of such revenues so deposited and dividing the sum by five. At the time of each such certification, the Auditor General shall also certify as separate items (i) the amount of outstanding net debt as of the end of the preceding fiscal year; and (ii) the amount of such net debt as of the date of such certificate; and (iii) *the difference between the limitation upon all net debt outstanding as provided in Article VIII, section 7 (a) (4) of the Constitution of Pennsylvania and item (ii) above; and (iv)* the amount of such debt scheduled to be repaid during the remainder of the fiscal year in which such certificate is issued; and **[(iv)] (v)** the amount of debt authorized by law to be issued, but not yet incurred; and **[(v)] (vi)** the amount of outstanding obligations excluded from outstanding debt as self sustaining pursuant to Article VIII, section 7 (c) (1), (2), and (3) of the Constitution of Pennsylvania.

(b) From time to time, as required in connection with the sale of or settlement for obligations of the Commonwealth, **[its agencies or authorities,]** the Auditor General shall issue **[similar]** certificates *containing items (ii) and (iii)* as of the dates determined by the Governor to be relevant to such sales or **[closings]** *settlements*.

(c) In making such certificates, the Auditor General shall be entitled to rely as to any of items (i) through **[(iv)] (v)** upon any certificate furnished by the State Treasurer in respect of outstanding Commonwealth general obligation bonds, and upon any certificate furnished by the Department of Revenue, or by the appropriate bank or trust company acting as fiscal agent or trustee, in respect of the *outstanding* obligations of any authority.

Section 6. Temporary Financing Authorizing.—(a) Pending the issuance of bonds of the Commonwealth as hereinafter authorized, the issuing officials are hereby authorized in accordance with the provisions hereof and on the credit of the Commonwealth to make temporary borrowings *not to exceed three years* in anticipation of the issue of bonds

with the latest stated maturity date to be set forth in the notes, in order to provide funds in such amounts as may from time to time be deemed advisable to carry out the purposes of any debt authorizing [act] acts prior to the issue of bonds. In order to provide for and in connection with such temporary borrowings the issuing officials are hereby authorized in the name and on behalf of the Commonwealth to enter into any loan or credit agreement or agreements or other agreements with any banks or trust companies or other lending institutions or persons in the United States having power to enter into the same, which agreements may contain such provisions, not inconsistent with the provisions of this act, as may be customary in such instruments and as may be authorized by the issuing officials. **[The term of the debt shall be taken in the case of the notes as the term of the bonds in anticipation of which such notes are issued.]**

(b) All temporary borrowings made under the authorization of this section shall be evidenced by notes of the Commonwealth, which shall be issued from time to time for such amounts not exceeding in the aggregate [at] the applicable statutory and constitutional debt limitation in such form and in such denominations, and subject to such terms and conditions of sale and issue, prepayment or redemption and maturity, rate or rates of interest, and time of payment of interests, as the issuing officials shall direct and in accordance with the applicable debt authorizing act.

The first repayments of such notes shall be stated to mature prior to the expiration of a period of time equal to one-tenth of the term of the bonds in anticipation of which such notes are issued.

(c) All such notes shall be funded and retired **[not later than the applicable maturity date set forth in the debt authorizing act,]** by the issuance and sale of bonds of the Commonwealth as hereinafter authorized, to the extent that payment of such notes has not otherwise been made or provided for.

(d) The proceeds of all such temporary borrowing shall be paid to the State Treasurer to be held and disposed of in accordance with the provisions of section 10 of this act.

Section 7. Bonds; Issue of Bonds and Notes; Maturity; Interest, Etc.—(a) As evidence of indebtedness as authorized, *general obligation* bonds of the Commonwealth *which may be for one or more purposes* shall be issued in accordance with the provisions hereof at any time, or from time to time, to fund and retire notes issued pursuant to section 6 of this act (hereinafter referred to as “funding bonds”) or to provide moneys necessary to carry out the purposes of the debt authorizing acts, or both.

**[(b) Notes authorized by the provisions of section 6 of this act, and bonds, other than funding bonds shall be issued, from time to time, and in such total amounts as the Commonwealth department, agency or authority shall, with the approval of the Governor, determine.**

(c) *(b)* When bonds are issued from time to time, 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 or rates of interest as may be determined by the issuing officials. Such bonds shall be issued in such denominations and in such form or forms, whether coupon or registered as to both principal and interest, and with or without such provisions for interchangeability, as the issuing officials may determine. In case interest coupons are attached, they shall, unless the debt authorizing act provides otherwise, contain the facsimile **[signatures]** *signature* of the State Treasurer **[and the Auditor General]**.

**[(d)] (c)** Except as set forth in the foregoing provisions of this section, the terms and conditions of issue, redemption and maturity, and time of payment of interest, shall be as the issuing officials shall specify: Provided, That the bonds of any series shall mature within a period not to exceed the estimated useful lives of the capital facilities projects as stated in the debt authorizing act but not later than thirty years from the date of issuance. The issuing officials shall provide for the amortization of the bonds in substantial and regular amounts over the term of the debt, provided that 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 such debt to the date of the expiration of the term of the debt. 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. Where 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 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, and 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, provided that 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 **[by a substantial amount]** the aggregate financial cost of all capital projects having the same or shorter estimated useful lives, or in each case a proportionate amount if bonds are issued for less than the full financial cost of all projects being financed in the same category. The issuing officials are hereby authorized to carry out the provisions of this act relating to the issuance of bonds and shall determine all matters in connection therewith subject to the provisions hereof.

**[(e)] (d)** All bonds issued under the authority of this act, unless the debt authorizing act provides 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 two

duly authorized officers of a duly authorized loan and transfer agent of the Commonwealth.

[(f)] (e) All bonds issued under the authority of this act shall set forth **[the purpose for which they were authorized,]** the title and citation of the debt authorizing **[act,] acts,** and that they are issued in accordance with the provisions of this act. In any action or proceeding involving the validity or enforceability of such bonds, such recital shall be conclusive as to their **[purpose and]** authorization.

Section 8. Direct Obligations, Exemption from Taxation, Means of Payment.—All notes and bonds issued in accordance with the provisions of this act shall be direct obligations of the Commonwealth of Pennsylvania, and the *full* faith and credit of the Commonwealth are hereby pledged for the payment of the interest thereon as the same shall become due and the payment of the principal thereof at maturity. All notes and bonds issued under the provisions of this act shall be exempt from taxation for State and local purposes. The principal of and interest on such notes and bonds shall be payable in lawful money of the United States of America.

Section 10. Disposition and Use of Proceeds.—(a) The proceeds of all temporary borrowings made pursuant to the provisions of section 6 of this act, and the proceeds from the sale of bonds, other than funding bonds, issued pursuant to the provisions of section 7 of this act, shall be paid to the State Treasurer and be held by him in a separate fund and, **[unless appropriated to an authority by a debt authorizing act]** shall be deposited in such depositories as may be selected by him to the credit of such fund, which fund shall be known as the “Capital Facilities Fund,” which shall have such separate accounts therein as may be deemed desirable by the issuing officials, but not less than one separate account for each category of capital projects.

(b) The moneys in the Capital Facilities Fund are hereby specifically dedicated to meeting the financial costs of capital projects **[for the construction or acquisition of which the moneys were obtained].** *The moneys shall be paid by the State Treasurer to those departments, agencies or authorities authorized to expend same as required by them to pay financial costs at such time as the department, agency or authority certifies the same to be legally due and payable.*

(c) Pending their application to the purposes authorized, moneys 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. All earnings received from the investment or deposit of such funds shall be paid into the State Treasury to the credit of the account in the Capital Facilities Fund to which such funds were originally deposited.

Section 11. Capital **[Facilities Redemption] Debt** Fund; Investments, Redemption of Bonds.—(a) All bonds issued under the authority of this act shall be **[redeemed] paid** at maturity and all interest due from time to time after July 1, 1968, on such bonds and on all notes issued under the

provisions of this act shall be paid by the Board of Finance and Revenue of the Commonwealth from the Capital **[Facilities Redemption] Debt** Fund. The General Assembly shall appropriate annually the moneys necessary to pay the aforesaid interest on said bonds and notes and the principal of said bonds and notes at maturity for which other provision is not made. All moneys so appropriated shall be paid into the Capital **[Facilities Redemption] Debt** Fund by the State Treasurer. All of such moneys so received prior to the date for disbursement thereof shall be invested by the Board of Finance and Revenue pending disbursement in such securities as are provided by law for the investment of surplus moneys of the Commonwealth.

(b) The investment of such moneys and the accumulations thereon in the Capital **[Facilities Redemption] Debt** Fund shall be devoted to and be used exclusively for the payment of the interest accruing on such bonds and notes and for the redemption of such bonds and notes at maturity or upon the redemption date, if called for prior redemption. The Board of Finance and Revenue is authorized at any time to use any of such funds for the purchase and retirement of all or any part of the bonds issued under the provisions of this act: Provided, That no purchase shall be made which will reduce the moneys in the Capital **[Facilities Redemption] Debt** Fund below the amount necessary to pay all principal and interest still to become due in the fiscal year of such purchase. In the event that all or any part of said bonds shall be purchased by the Commonwealth, they shall be cancelled and returned to the State Treasurer, as cancelled and paid bonds and thereafter all payments of interest thereon shall cease and the cancelled bonds and coupons shall be destroyed within two years after cancellation in the presence of the issuing officials *or their duly authorized representatives*. A certificate evidencing the destruction, satisfactory to the duly authorized loan and transfer agent of the Commonwealth, shall be furnished to it. All cancelled bonds and coupons shall be so mutilated as to make the cancelled bonds and coupons nonnegotiable.

Section 12. Funding Bonds.—The issuing officials subject to the provisions of any bond resolution or trust indenture are hereby authorized to issue funding bonds for the purpose of refunding any **[bonds or funding any notes issued under the provisions of this act and] obligations** then outstanding, to provide funds to redeem and retire such outstanding **[bonds] obligations** with accrued interest and any premium payable thereon, at maturity or any call date. The issuance of such funding bonds, the maturities and other details thereof, the rights of the holders thereof, and the duties of the issuing officials in respect to the same shall be governed by the foregoing provisions of this act in so far as the same may be applicable. Funding bonds may be issued to refund bonds previously issued for refunding purposes. The proceeds of the sale of any funding bonds shall be paid to the State Treasurer and applied to the payment of

the principal of, and the accrued interest and premium, if any, on the bonds or notes for the refunding of which such funding bonds shall 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 any funding bonds be issued to refund beyond the same fiscal year any portion of debt required by this act and the Constitution of Pennsylvania to be retired in the year of issue of such funding bonds in order to comply with the requirement in substantial and regular amounts as provided in subsection [(e) of section 3] (d) of section 7.

Section 4. Sections 17 and 19 of the act are repealed.

Section 5. (a) The following parts of acts are repealed absolutely:

(1) Clause (i) of section 4, and the first, third, fourth and fifth paragraphs of section 5, act of March 31, 1949 (P. L. 372), known as "The General State Authority Act of one thousand nine hundred forty-nine."

(2) Clause (i) of section 4, and the first, second, third and fourth paragraphs of section 6, act of April 18, 1949 (P. L. 604), known as the "State Highway and Bridge Authority Act."

(3) Clause (10) of subsection (a) of section 5, and section 7, act of January 22, 1968 (Act No. 7), known as "The Pennsylvania Transportation Assistance Authority Act of 1967."

(b) The following acts are repealed insofar as they provide or authorize the incurring of Commonwealth debt subject to the limitation set forth in clause (4), subsection (a) of section 7 of Article VIII of the Constitution of Pennsylvania or are otherwise inconsistent with the act amended by this act:

(1) Act of July 5, 1947 (P. L. 1217), known as the "State Public School Building Authority Act."

(2) Act of August 14, 1963 (P. L. 984), known as the "Metropolitan Transportation Authorities Act of 1963."

(3) Act of December 6, 1967 (P. L. 678), known as "The Pennsylvania Higher Educational Facilities Authority Act of 1967."

(c) All other acts or parts of acts are repealed insofar as they are inconsistent herewith.

(d) Nothing contained herein shall in any way impair, restrict, diminish or otherwise affect the rights or remedies granted to or conferred upon bondholders by any act of the General Assembly heretofore enacted whether or not this act repeals same, as to those bonds previously authorized by law.

Section 6. This act shall take effect immediately.

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"retirement" in original.

' APPROVED—The 24th day of July, A. D. 1969.

RAYMOND P. SHAFER

The foregoing is a true and correct copy of Act of the General Assembly  
No. 75.



*Joseph P. Kelley*  
Secretary of the Commonwealth.