

No. 1984-26

AN ACT

HB 1616

Amending the act of July 5, 1947 (P.L.1217, No.498), entitled "An act to promote the education and educational facilities of the people of the Commonwealth of Pennsylvania; creating a State Public School Building Authority as a body corporate and politic with power to construct, improve and operate projects and to lease the same and to fix and collect fees, rentals and charges for the use thereof; authorizing school districts to enter into contracts to lease; authorizing and regulating the issuance of bonds by said Authority; and providing for the payment of such bonds and the rights of the holders thereof; granting the right of eminent domain; increasing the powers and duties of the Department of Public Instruction; and providing that no debt of the Commonwealth shall be incurred in the exercise of any of the powers granted under this act; and making an appropriation to said Authority to pay expenses incident to its formation," providing for the financing of projects through loans by the Authority and authorizing the use of facsimile signatures.

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

Section 1. The definition of "project" in section 2 of the act of July 5, 1947 (P.L.1217, No.498), known as the State Public School Building Authority Act, is amended and a definition is added to read:

Section 2. Definitions.—The following terms whenever used or referred to in this act shall have the following meanings, except in those instances where the context clearly indicates otherwise:

* * *

(c) "Project" shall mean any structure, facility or undertaking which the Authority is authorized to construct, *finance*, improve, *install*, maintain or operate under the provisions of this act;

* * *

(j) "*Financing*" or "*to finance*" means and includes the lending or providing of funds to a school district or board of trustees of a community college for payment of the cost of a project.

Section 2. Section 3 of the act, amended November 20, 1969 (P.L.305, No.130), is amended to read:

Section 3. State Public School Building Authority.—The Governor, the State Treasurer, the Auditor General, the Superintendent of Public Instruction, the Secretary of Property and Supplies, the President pro tempore of the Senate, the Speaker of the House of Representatives, the minority leader of the Senate, the minority leader of the House of Representatives, and their respective successors in office are hereby created a body corporate and politic, constituting a public corporation and governmental instrumentality by the name of the "State Public School Building Authority." The President pro tempore of the Senate and minority leader of the Senate and the Speaker of the House of Representatives and minority leader of the House of Representatives may designate any member of the Senate or House, respectively,

to act in their stead to serve at the discretion of the respective President pro tempore or minority leader and Speaker of the House of Representatives or minority leader. Said members of the Authority shall be entitled to no compensation for their services as members but shall be entitled to reimbursement for all necessary expenses incurred in connection with the performance of their duties as members.

The President pro tempore of the Senate and the Speaker of the House of Representatives, the minority leader of the Senate and the minority leader of the House of Representatives, shall continue as members of the Authority until their respective successors in office assume such office, regardless of whether or not they shall have ceased to be members of the Senate or the House of Representatives. *The members of the Authority may authorize by written proxy or authorization, a personal deputy to appear and act for them at a meeting and for the purposes specified in such written proxy or authorization, provided that a separate written authorization or proxy shall be required for each separate meeting.*

Section 3. Clause (h) of the second paragraph of section 4 of the act, amended December 17, 1982 (P.L.1372, No.314), is amended and a clause is added to read:

Section 4. Purposes and General Powers.—* * *

The Authority is hereby granted and shall have and may exercise all the 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:

* * *

(d.1) To finance projects by making loans to any eligible school district or board of trustees of a community college, which loans may be evidenced by and secured as may be provided in loan agreements, mortgages, security agreements or any other contracts, instruments or agreements, which may contain such provisions as the Authority shall determine necessary or desirable for the security or protection of the Authority or its bondholders. All such provisions shall be a part of the contract with the holders of the bonds of the Authority issued with respect to such project.

* * *

(h) To fix, alter, charge and collect rentals, and other charges [for the use] *in respect* of the facilities [of,] *financed* or for the services rendered by[,] the Authority or projects thereof, at reasonable rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority, not provided for by appropriation by the Commonwealth, or otherwise, the acquiring, financing, refinancing, construction, improvement, repair, equipping and furnishing, maintenance and operation of projects and [its] *any* facilities and properties, the payment of the principal of, and interest on, [its obligations] *any obligation*, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations;

* * *

Section 4. The act is amended by adding a section to read:

Section 5.1. Loan Contracts with the Authority.—*Any school district or districts, or any board of trustees of a community college within the Commonwealth, shall have power and authority, with the approval of the department, when necessary, to enter into loan agreements, mortgages, security agreements or any other loan contracts with the Authority for a term not exceeding forty (40) years in the case of a school district and thirty (30) years in the case of a community college and providing for the repayment of any such loans at such times and in such amounts as may be determined by the Authority. There shall be included in the annual budget of each school district or community college board of trustees which has entered into a loan contract with the Authority an amount equal to the amount due annually to the Authority under such loan contract and such amounts shall be payable out of current revenues of the school district or board of trustees of a community college. Amounts payable under such loan contracts shall be considered capital expenses for the purpose of reimbursement or payment by the Commonwealth to school districts or boards of trustees of community colleges. In all cases where a school district or the board of trustees of a community college fails to pay or provide for payment of any amount due the Authority or its assigns for any period in accordance with the terms of any loan contract entered into between the Authority and a school district or board of trustees of a community college, the Secretary of Education shall notify such school district or board of trustees of a community college of its obligation and shall withhold out of any State appropriation that may be due such school district or board of trustees of a community college an amount equal to the amount of any such payment due and owing and shall apply such amount to the payment or payments due to the Authority or its assigns.*

Section 5. Section 6 of the act, amended December 17, 1982 (P.L.1372, No.314), is amended to read:

Section 6. Purposes and Powers; Bonds.—(a) The bonds of the Authority, hereinabove referred to and authorized to be issued, shall be authorized by resolution of the board, and shall be of such series, bear such date or dates, mature at such time or times, not exceeding forty (40) years from their respective dates, bear interest at such rate or rates payable 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 such medium of payment, and at such place or places, be subject to such terms of redemption, at such prices not exceeding one hundred five per centum of the principal amount thereof, and be entitled to such priorities in the revenues, rentals or receipts of the Authority as such resolution or resolutions may provide. The interest on bonds issued shall be paid during the term for which the bonds were issued. [The bonds shall bear the facsimile signatures of the Governor and the President of the Authority, together with a facsimile of the corporate seal and the manual signature of the secretary and treasurer in attestation thereof, 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.] *The bonds shall be signed by such officers,*

either manually or by facsimile as the Authority shall determine, and shall have imprinted thereon a facsimile of the corporate seal, attested by the facsimile signature of the secretary 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 any of the aforesaid persons signing such bonds or whose facsimile signature shall be upon the bonds or coupons shall have ceased to hold their respective offices at the time when such bonds shall actually be delivered.

Said bonds shall be sold as the Authority shall determine, at private sale or to the highest responsible bidder or bidders after public notice by advertisement; the notice shall contain a general description of the bonds, the manner, place and time of the sale, or the time limit for the receipt of proposals, the name of the officer to whom bids or proposals shall be delivered, and a statement of the terms and conditions of sale, which shall include a statement of the highest net interest cost or highest interest cost computed by the Present Worth Method, whichever is specified, acceptable to the Authority. For the purposes of this section, net interest cost shall be determined by ascertaining the total amount of interest payable with respect to the bonds, computed from the date of the bonds to the stated maturity dates thereof, plus the amount of any discount from the principal amount of the bond or less the amount of any premium in excess of the principal amount of the bonds. 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.

Such bonds are hereby made securities in which all officers of the State and its political subdivisions and municipal officers and administrative departments, boards and commissions of the Commonwealth, all banks, bankers, savings banks, trust companies, saving and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries, and all other persons whatsoever who now or may hereafter be authorized to invest in bonds or other obligations of the Commonwealth, may properly and legally invest any funds, including capital, belonging to them or within their control, and said bonds or other securities or obligations are hereby made securities which may properly and legally be deposited with, and received by, any State or municipal officers or agency of the Commonwealth for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may hereafter be authorized by law.

(b) Any resolution or resolutions authorizing any bonds may contain provisions which shall be part of the contract with the holders thereof as to (a) pledging the full faith and credit of the Authority (but not of the Commonwealth or any county or other political subdivision thereof) for such obligations, or restricting the same to all or any of the revenues, rentals or receipts of the Authority from all or any projects or properties, (b) the con-

struction, improvement, *financing*, operation, extension, enlargement, maintenance and repair, of any project or projects, and the duties of the Authority with reference thereto, (c) the terms and provisions of the bonds, (d) limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by the United States may be applied, (e) the rate of rentals and other charges for use of the facilities of, or for the services rendered by, the Authority, including limitations upon the power of the Authority to modify any leases or other agreements pursuant to which any rentals or other charges are payable, (f) the setting aside of reserves or sinking funds and the regulation and disposition thereof, (g) limitations on the issuance of additional bonds, (h) the terms and provisions of any deed or trust or indenture securing the bonds, or under which the same may be issued, and (i) any other or additional agreements with the holders of the bonds;

(c) The Authority may enter into any deeds of trust, indentures or other agreements with any bank or trust company, or other person or persons in the United States having power to enter into the same, including any Federal agency, as security for such bonds, and may assign and pledge all or any of the revenues, rentals or receipts of the Authority thereunder. Such deed of trust, indenture 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, *financing*, operation, maintenance and repair of any project or projects, and the duties of the Authority with reference thereto, (ii) the application of funds and the safeguarding of funds on hand or on deposit, (iii) the rights and remedies of said 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.

Said bonds shall have all the qualities of negotiable instruments under the law merchant, and the negotiable instruments law of the Commonwealth of Pennsylvania.

Section 6. Sections 7 and 12 of the act are amended to read:

Section 7. 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 or other agreement under which the same may be issued *or secured*. In the event that the Authority shall default in the payment of principal of, or interest on, any of the bonds after 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 (30) 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 per centum 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 acknowl-

edged in the same manner as a deed to be recorded may (except as such right may be limited under the provisions of any deed of trust, indenture or other agreement as aforesaid), appoint a trustee to represent the bondholders for the purposes herein provided. 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 per centum (or such other percentage as may be specified in any deed of trust, indenture 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 rates, rentals and other charges adequate to carry out 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 per centum (or such other percentage as may be specified in any deed of trust, indenture or other agreement aforesaid) of the principal amount of the bonds then outstanding, to annul such declaration and its consequences;

(b) Any trustee, whether appointed as aforesaid or 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 (to the same extent that the Authority itself could so do) enter and take possession of the facilities of the Authority or any parts thereof, the revenues, rentals, 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 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 the trustees, the fees, counsel fees and expenses of the 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] any project or otherwise**, the revenues or receipts from which are or may be applicable to the payment of the bonds so in default. Said 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 incident to the general representation of the bondholders in the enforcement and protection of their rights;

(c) In addition to all other rights and all other remedies, any holder of bonds of the Authority shall have the right by mandamus or other suit, action or proceeding at law, or in equity, to enforce his rights against the Authority, including the right to require the Authority to collect fees, rentals and other charges adequate to carry out any agreement as to, or pledge of, such fees, rentals or other charges or income, revenues and receipts, and to require the Authority to carry out any of its covenants and agreements with the bondholders and to perform its and their duties under this act.

Section 12. Use of Projects.—The use of the facilities [of] *acquired, financed, refinanced, constructed, improved, furnished, equipped, maintained and operated* by the Authority and the operation of its business shall be subject to the rules and regulations from time to time adopted by the Authority: Provided, however, That the Authority shall not be authorized to do anything which will impair the security of the holders of the obligation of the Authority or violate any agreements with them or for their benefit.

Section 7. Section 13 of the act, amended August 10, 1951 (P.L.1151, No.255), is amended to read:

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, *financing*, extension, improvement, or enlargement of any project, or part thereof, or for refunding purposes, that the Commonwealth will not limit or alter the rights hereby vested in the Authority, or limit or alter any provisions for the security and protection of the Authority and its bondholders contained in this act or as now provided by law, until all bonds at any time issued, together with the interest thereon, are fully met and discharged. The Commonwealth 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, *financing*, 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 any project or such portion thereof.

Section 8. This act shall take effect immediately.

APPROVED—The 23rd day of March, A. D. 1984.

DICK THORNBURGH