

PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY ACT

Act of Mar. 1, 1988, P.L. 82, No. 16

Cl. 64

AN ACT

Providing for the establishment, implementation and administration of the Pennsylvania Infrastructure Investment Authority; imposing powers and duties on a board of trustees; transferring the rights, powers, duties and obligations of the Water Facilities Loan Board to the Pennsylvania Infrastructure Investment Authority; providing for the issuance of notes and bonds; providing for financial assistance and for a comprehensive water facilities plan; authorizing a referendum to incur indebtedness; making an appropriation; and making repeals.

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

Section 1. Short title.

This act shall be known and may be cited as the Pennsylvania Infrastructure Investment Authority Act.

Section 2. Legislative intent.

The General Assembly finds and declares that:

(1) The health of millions of citizens of this Commonwealth is at risk due to substandard and deteriorated water supply and sewage disposal systems.

(2) Many water and sewage systems in this Commonwealth are aging, outmoded, inadequate, deteriorating and operating above capacity, and many areas have to limit their growth solely due to lack of proper water supply and sewage disposal.

(3) The economic revitalization of this Commonwealth is being stifled by a lack of clean water and adequate sewage facilities.

(4) Many Pennsylvania communities have antiquated or inadequate storm water systems thereby resulting in storm water flows which threaten the public health and safety due

to flooding, overloaded sewer lines, soil erosion, sinkhole development and expansion and reduction in surface water and groundwater quality.

(5) Financing of water and sewage projects and storm water projects at affordable cost is not currently available in many areas of this Commonwealth.

(6) The lack of affordable financing to implement storm water management plan recommendations has resulted in compliance by only 17 counties with the requirements of the act of October 4, 1978 (P.L.864, No.167), known as the Storm Water Management Act.

(7) In order to assist in financing projects to protect the health and safety of the citizens of this Commonwealth and to promote the economic development of Pennsylvania, the General Assembly has determined that it is necessary to establish the Pennsylvania Infrastructure Investment Authority and to provide funding of the authority programs.

(2 amended Dec. 16, 1992, P.L.1137, No.149)

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Authority." The Pennsylvania Infrastructure Investment Authority.

"Board." The board of directors of the authority.

"Bonds." Bonds, notes or other evidences of indebtedness issued by the authority pursuant to this act.

"Department." The Department of Environmental Protection of the Commonwealth. (Def. amended June 19, 2013, P.L.51, No.16)

"Eligible cost." The cost of all labor, materials, machinery and equipment, lands, property, rights and easements, plans and specifications, surveys or estimates of costs and revenues, pre-feasibility studies, engineering and legal services, and all other expenses necessary or incident to the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a project.

"Governmental unit." Any agency of the Commonwealth or any county, municipality or school district, or any agency, instrumentality, authority or corporation thereof, or any public body having local or regional jurisdiction or power.

"Project." The eligible costs associated with the acquisition, construction, improvement, expansion, extension, repair, rehabilitation or security measures of all or part of any facility or system, whether publicly or privately owned:

(1) for the collection, treatment or disposal of wastewater, including industrial waste;

(2) for the supply, treatment, storage or distribution of drinking water;

(3) for the control of pollution associated with storm water, which may include, but need not be limited to, the transport, storage and the infiltration of storm water; or

(4) for the best management practices to address pollution, including innovative techniques developed to comply with the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, or identified in the county-prepared watershed plans pursuant to the act of October 4, 1978 (P.L.864, No.167), known as the Storm Water Management Act, or as identified in Pennsylvania's Nonpoint Source Management Program Update, as required under section 319(b) of the Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. § 1329(b)).

(Def. amended June 19, 2013, P.L.51, No.16)

"Secretary." The Secretary of Environmental Protection of the Commonwealth. (Def. amended June 19, 2013, P.L.51, No.16)

"Security measures." Infrastructure improvements to publicly or privately owned water or wastewater systems designed in whole or in part for the protection of the collection, treatment and distribution of potable water and treatment of wastewater from threats and vulnerabilities to ensure the public health of the systems' customers in accordance with the Environmental Protection Agency's Drinking Water State Revolving Fund Program and the Clean Water State Revolving Fund Program established under section 1452 of the Safe Drinking Water Act (Public Law 93-523, 42 U.S.C. § 300j-12) and Title VI of the Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. §§ 1381-1387), respectively, and any other program for which there are funds or accounts administered by the authority. (Def. added July 14, 2005, P.L.299, No.51)

"Storm water." Drainage runoff from the surface of the land resulting from precipitation or snow or ice melt. (Def. added Dec. 16, 1992, P.L.1137, No.149)

"Water Facilities Loan Board." The board established under 32 Pa.C.S. § 7504 (relating to Water Facilities Loan Board).

Compiler's Note: The Department of Environmental Resources, referred to in the def. of "department," was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Compiler's Note: The Secretary of Environmental Resources, referred to in the def. of "secretary," was abolished by Act 18 of 1995. The functions of the secretary were transferred to the Secretary of Conservation and Natural Resources and the Secretary of Environmental Protection.

Section 4. Pennsylvania Infrastructure Investment Authority; board of directors.

(a) Establishment.--There is hereby established a body corporate and politic, with corporate succession, to be known as the Pennsylvania Infrastructure Investment Authority. The authority is constituted an instrumentality of the Commonwealth, and the exercise by the authority of the powers conferred by this act shall be deemed and held to be a public and essential governmental function.

(b) Membership.--The authority shall consist of a 13-member board of directors composed of the Governor; the Secretary of Environmental Resources; the Secretary of Commerce; the Secretary of Community Affairs; the Secretary of General Services; the Secretary of the Budget; two Senators, one each to be appointed by the President pro tempore of the Senate and the Minority Leader of the Senate; two members of the House of Representatives, one each to be appointed by the Speaker of the House of Representatives and the Minority Leader of the House of Representatives; and three persons to be appointed by the Governor, one of whom shall be a registered engineer in this Commonwealth, one of whom shall be a representative of water supply and sewage treatment system industries, and one of whom shall be a representative of a State local government association. The three members appointed by the Governor shall serve for a term of two years and shall be eligible for reappointment.

(c) Officers.--The Governor shall be the chairman and chief executive officer of the authority. The board shall biannually elect a vice chairman. The board shall select a secretary and

treasurer who need not be members of the board, and the same person may be selected to serve as both secretary and treasurer.

(d) Vesting of powers.--The powers of the authority shall be vested in the board in office from time to time, and eight members of the board shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the authority by the affirmative vote of at least seven members of the board. No vacancy on the board shall impair the right of a quorum of the members of the board to exercise the powers and perform the duties of the authority.

(e) Designees.--Each public officer member of the board may designate an officer or employee of the Commonwealth to represent him at meetings of the board. Each designee may lawfully vote and otherwise act on behalf of the member of the board for whom he constitutes the designee. The designation shall be in writing delivered to the authority and shall continue in effect until revoked or amended in writing delivered to the authority.

(f) Services.--Research, investigation and other services necessary for the operation of the board shall be carried out from resources and by employees from the various executive departments represented on the board. All applicable Commonwealth departments and agencies shall cooperate with, and provide assistance to, the board, which may, at its discretion, provide financial reimbursement.

(g) Dissolution.--The authority may be dissolved by law, provided that the authority has no bonds or other debts or obligations outstanding or that provision has been made for the payment or retirement of all such bonds, debts and obligations. Upon any dissolution of the authority, all property, funds and assets of the authority shall be vested in the Commonwealth.

Compiler's Note: Section 1109 of Act 58 of 1996, which created the Department of Community and Economic Development and abolished the Department of Community Affairs, provided that, in place of the membership of the Secretary of Community Affairs on the Pennsylvania Infrastructure Investment Authority under this section, the Governor shall make an additional appointment. The Secretary of Commerce, referred to in subsec. (b), was renamed the Secretary of Community and Economic Development by Act 58 of 1996.

Compiler's Note: The Secretary of Environmental Resources, referred to in this section, was abolished by Act 18 of 1995. The functions of the secretary were transferred to the Secretary of Conservation and Natural Resources and the Secretary of Environmental Protection.

Section 5. Revenues of authority.

(a) Sources of revenues.--The authority may receive money from sources of revenue, including, but not limited to, the following:

- (1) State funds appropriated to the authority.
- (2) Federal funds appropriated to or granted to the authority.
- (3) Proceeds from the sale of bonds of the authority authorized under section 7.
- (4) Proceeds from the sale of bonds issued on or after the effective date of this act from the remaining unused authorization in addition to any other funds that remain unencumbered on the effective date of this act from the act of July 12, 1981 (P.L.263, No.88), entitled "An act authorizing the incurring of indebtedness, with approval of

the electors, of \$300,000,000 for the repair, construction, reconstruction, rehabilitation, extension and improvement of community water supply systems, and for the repair, reconstruction or rehabilitation of flood control facilities, dams and port facilities and providing the allotment of proceeds from borrowing hereunder," approved by the electorate on November 3, 1981.

(5) ((5) expired December 31, 1989. See Act 149 of 1992.)

(6) Proceeds from the sale of any Commonwealth general obligation bonds issued under sections 16 and 17.

(7) Proceeds from the sale of any Commonwealth general obligation bonds issued under section 12 of the act of March 16, 1992 (P.L.10, No.5), known as the Small Water Systems Assistance Act.

(8) Proceeds from the sale of authority assets.

(9) Repayment of loan principal.

(10) Payment of interest on loans made by the authority.

(11) Interest earned on the investments of authority moneys.

(b) Control of revenues; investment of funds.--The board shall have exclusive control and management of all moneys of the authority and full power to invest moneys not required for immediate use in any securities or other investments in which funds of the Commonwealth are authorized to be invested and in any other type of security or investment if, prior to the acquisition of the securities or investments, the board determines by resolution that such type of security or investment is in the best interests of the authority and the State Treasurer approves of such type of security or other investment.

(c) General fund and other separate funds or accounts.--

(1) The board shall establish a general fund from which it may authorize expenditures for any of the purposes of this act.

(2) The board shall establish a Water Pollution Control Revolving Fund administered in accordance with the requirements of section 212 of the Water Quality Act of 1987 (Public Law 100-4, 101 Stat. 21), and may establish such other separate revolving funds and accounts when determined by the board to be necessary or convenient. The board may deposit no more than \$725,000,000 in funds and accounts established under this paragraph from the sources specified in subsection (a)(4), (5), (6) and (7). This limitation shall not apply to any Federal funds.

(3) The board may also establish such nonrevolving funds and accounts as it deems necessary or convenient. Any funds from sources specified in subsection (a)(4), (5), (6) and (7) which are not deposited in the board's revolving funds and accounts shall be deposited into these nonrevolving funds and accounts.

(d) Loan repayment.--Subject to any agreement with the holders of bonds, repayments of loan principal, together with any interest thereon, shall be deposited with the authority. Repayments from loans made from revolving funds and accounts may be deposited in such funds and accounts as the board shall determine. Repayments from other loans shall be deposited in nonrevolving funds and accounts for the purpose of repayment of general obligation bonds of the Commonwealth issued under the authority of this act. Loans made by the Water Facilities Loan Board prior to the effective date of this act and repayment of the principal of and interest on those loans shall be

controlled by the provisions of Title 32 of the Pennsylvania Consolidated Statutes (relating to forests, waters and State parks) and the regulations promulgated thereunder. The board shall maintain such separate funds and accounts as may be necessary for the deposit of payments made under authority or requirement of State or Federal law.

(5 amended Dec. 16, 1992, P.L.1137, No.149)

Section 6. Powers and duties of authority.

The authority shall have and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this act, including, but not limited to, the following:

(1) Conduct examinations and investigations and take testimony, under oath or affirmation, on any matter necessary to the determination and approval of project applications.

(2) Sue and be sued, implead and be impleaded, complain and defend in all courts.

(3) Adopt, use and alter at will a corporate seal.

(4) (i) Make bylaws for the management and regulation of its affairs, and make and, from time to time, adopt, amend and repeal rules and regulations governing the administrative procedures and business of the authority.

(ii) Notwithstanding subparagraph (i), and in order to facilitate the speedy implementation of this program, the board shall have the power and authority to promulgate, adopt and use guidelines which shall be published in the Pennsylvania Bulletin. The guidelines shall be subject to review pursuant to section 204(b) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and shall not be subject to review pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, and shall be effective for a period not to exceed one year from the effective date of this act.

(iii) After the expiration of the one-year period, all guidelines shall expire and shall be replaced by regulations which shall have been promulgated, adopted and published as provided by law.

(iv) Notwithstanding subparagraph (i) and in order to facilitate the speedy implementation of the Storm Water Control Program, the board shall have the power and authority to promulgate, adopt and use guidelines which shall be published in the Pennsylvania Bulletin. The guidelines shall be subject to review pursuant to section 204(b) of the Commonwealth Attorneys Act and shall not be subject to review pursuant to the Regulatory Review Act and shall be effective for a period not to exceed two years from the effective date of this amendatory act. ((iv) added Dec. 16, 1992, P.L.1137, No.149)

(v) After expiration of the two-year period, all guidelines relating to the Storm Water Control Program shall expire and shall be replaced by regulations which shall have been promulgated, adopted and published as provided by law. ((v) added Dec. 16, 1992, P.L.1137, No.149)

(5) Make contracts of every name and nature and execute all instruments necessary or convenient for the carrying on of its business.

(6) Accept grants from and enter into contracts or other transactions with any Federal, State or local agency.

(7) Take title by foreclosure or otherwise to any project or other property pledged, mortgaged, encumbered or otherwise available as security for a project financed in whole or in part by the board, whether by loan, loan guarantee or otherwise, where such acquisition is necessary to protect the interests of the board with respect to a project; pay all costs arising out of such acquisition from moneys held in the trust fund; and sell, transfer and convey all or any portion of any such project to any responsible buyer. The board may require a dedicated source of revenue to be available for repayment of any loan.

(8) Provide financial assistance, including, but not limited to, loans, loan guarantees, bond guarantees and grants for projects fulfilling the purposes of this act.

(9) Collect fees and charges relating to projects funded under this act, as the board determines to be reasonable, relating to activities undertaken in furtherance of the purposes of this act.

(10) Borrow money and issue bonds and provide for the right of holders thereof in accordance with the provisions of this act.

(11) Pledge, hypothecate or otherwise encumber all or any of the revenues or receipts of the authority as security for all or any of the bonds of the authority.

(12) Receive appropriations and apply for and accept grants, gifts, donations, bequests and settlements from any public or private source.

(13) Acquire, own, hold, construct, improve, rehabilitate, renovate, operate, maintain, sell, assign, exchange, lease, mortgage or otherwise dispose of real and personal property or any interest therein in the exercise of its powers and the performance of its duties under this act.

(14) Procure insurance against any loss in connection with its property and other assets and operations in any amounts and from any insurers as it deems desirable.

(15) Contract for the services of attorneys, accountants and financial experts and any other advisors, consultants and agents as may be necessary in its judgment, subject to the requirement that the chairman shall ensure that minority-owned or minority-controlled firms shall have an opportunity to participate to a significant degree in the provision of any contractual services purchased by the authority.

(16) Subject to any agreement with holders of its bonds, notes or other obligations, purchase bonds, notes and other obligations of the authority.

(17) Subject to any agreement with holders of its bonds, notes or other obligations, obtain as security for payment of all or any part of the principal of and interest and premium on the bonds, notes and other obligations of the authority, lines of credit and letters of credit in any amounts and upon any terms as the authority may determine, and pay any fees and expenses required in connection therewith.

(18) Do any act necessary or convenient to the exercise of the powers enumerated in this section or reasonably implied therefrom.

(19) Serve as the Water Facilities Loan Board to satisfy any outstanding bond obligation and loan liabilities.

(20) Assume all the rights, powers, duties, obligations and liabilities of the Water Facilities Loan Board.

(21) Repay the General Fund any or all debt service due to be paid in any fiscal year from bonds used to fund projects under this act.

(22) Prepare plans and reports and provide for public participation as deemed appropriate.

(23) Fund prefeasibility studies from any of its sources of revenue.

Section 7. Specific power to issue bonds.

(a) Principal amounts.--The authority may issue its bonds, notes or other obligations in principal amounts as in the judgment of the authority shall be necessary to provide sufficient funds for any of its corporate purposes. Corporate purposes shall be deemed to include:

(1) The payment, funding or refunding of the principal of, or interest or redemption premiums on, any bonds issued by it, whether the bonds to be funded or refunded have or have not become due.

(2) The establishment or increase of reserves to secure or to pay the bonds or interest thereon.

(3) All other costs or expenses of the authority incident to and necessary to carry out its corporate purposes and powers.

(b) Negotiable instrument designation.--Whether or not the bonds are of a form and character as to be negotiable instruments under the terms of Title 13 of the Pennsylvania Consolidated Statutes (relating to commercial code), the bonds are made negotiable instruments within the meaning of and for the purposes of Title 13, subject only to the provisions of the bonds for registration.

(c) Resolution; terms of bonds.--Bonds shall be authorized by resolution of the board, may be issued in one or more series and shall bear any date or dates, mature at any time or times not later than 35 years from the date of issuance thereof, bear interest at any rate or rates or at variable rates, be in any denomination or denominations, be in any form, either coupon or registered, carry any conversion or registration privileges, have any rank or priority, be executed in any manner, be payable from such sources in any medium of payment at any place or places within or without this Commonwealth, and be subject to any terms of redemption, purchase or tender by the authority or the holders thereof, with or without premium, as the resolution or resolutions may provide. A resolution of the authority authorizing the issuance of bonds may provide that the bonds be secured by a trust indenture between the authority and a trustee, vesting in the trustee any property, rights, powers and duties in trust consistent with the provisions of this act as the authority may determine. Such resolution may further provide for the acquisition of credit enhancement devices such as bond insurance, letters of credit or any other instruments to carry out the provisions of this section.

(d) Public or private sale.--Bonds shall be sold initially at public sale at any price or prices and in any manner as the authority may determine, subject to the requirement that the chairman shall ensure that minority-owned or minority-controlled firms shall have an opportunity to participate to a significant degree in any bond sale activities. Any portion of any bond issue so offered and not sold or subscribed for may be disposed of by private sale by the authority in such manner and at such prices as the authority shall direct.

(e) No prior preconditions on bond issuance.--Bonds may be issued under the provisions of this act without obtaining the consent of any department, division, board, bureau or agency

of the Commonwealth and without any other proceeding or the happening of any other conditions or other things than those proceedings, conditions or things which are specifically required by this act.

(f) Limitation on obligations.--Bonds issued under the provisions of this act shall not be a debt or liability of the Commonwealth or of any of its political subdivisions other than the authority and shall not create or constitute any indebtedness, liability or obligation of the Commonwealth or of any political subdivision. All bonds shall be payable solely from revenues or funds pledged or available for their payment as authorized in this act, including the proceeds of any issue of bonds. Each bond shall contain on its face a statement to the effect that the authority is obligated to pay the principal thereof or the interest thereon only from its revenues, receipts or funds pledged or available for their payment as authorized in this act, that neither the Commonwealth nor any political subdivisions are obligated to pay the principal or interest, and that neither the faith and credit nor the taxing power of the Commonwealth or any political subdivision is pledged to the payment of the principal of or the interest on the bonds.

(g) Nature of obligation and payment.--Each issue of bonds may, if it is determined by the authority, be general obligations of the authority payable out of any revenues, receipts or funds of the authority, or special obligations payable out of particular revenues, receipts or funds, subject only to agreements with the holders of the bonds. Bonds may be secured by one or more of the following:

(1) Pledges of revenues and other receipts to be derived from the payment of the interest on and any principal of notes and bonds issued by one or more governmental units and purchased by the authority, and any other payment made to the authority pursuant to agreements with any governmental unit or a pledge or assignment of any notes and bonds of any governmental units, and the rights and interests of the authority therein.

(2) Pledges of loan payments, rentals, other revenues to be derived from loan agreements, leases or other contractual arrangements with any person or entity, public or private, or a pledge or assignment of any such loan agreements, leases or other contractual arrangements, and the rights and interests of the authority therein.

(3) Pledges of grants, subsidies, contributions, appropriations or other payments to be received from the Federal Government or any instrumentality thereof or from the Commonwealth, any Commonwealth agency or other governmental unit.

(4) Pledges of all moneys, funds, accounts, securities and other funds, including the proceeds of the bonds.

(5) Mortgages and security interests covering all or part of any project or other property of any person or entity, real or personal, then owned or thereafter to be acquired, or a pledge or assignment of mortgages and security interests made or granted to the authority by any person or entity, and the rights and interests of the authority therein.

(h) Exemption from taxation.--All bonds and notes issued under the provisions of this section shall be exempt from taxation for State and local purposes.

Section 8. Covenants and express conditions on obligations.

In any resolution of the authority authorizing or relating to the issuance of bonds, the authority, in order to secure

payment of the bonds, and, in addition to its other powers, may, by provisions in the resolution which shall constitute covenants by the authority and contracts with the holders of the bonds, do the following:

- (1) Secure the bonds.
- (2) Make covenants against pledging all or part of its revenues or receipts to other parties.
- (3) Make covenants limiting its right to sell, pledge or otherwise dispose of notes and bonds of governmental units, loan agreements of public or private persons or entities, or other property of any kind.
- (4) Make covenants as to additional bonds to be issued, the limitations thereon, the terms and conditions thereof, and the custody, application, investment and disposition of the proceeds thereof.
- (5) Make covenants as to the incurring of other debts by it.
- (6) Make covenants as to the payment of principal of or interest on bonds, the sources and methods of the payment, the rank or priority of bonds with respect to liens or security interests or the acceleration of maturity of bonds.
- (7) Provide for replacement of lost, stolen, destroyed or mutilated bonds.
- (8) Make covenants as to the redemption, purchase or tender of bonds by the authority, or the holders thereof, and the privileges of exchanging them for other bonds.
- (9) Make covenants to create or authorize the creation of special funds or accounts to be held in trust or otherwise for the benefit of holders of bonds, or of reserves for other purposes and as to the use, investment and disposition of moneys held in those funds, accounts or reserves.
- (10) Provide for the rights, liabilities, powers and duties arising upon the breach of a covenant, condition or obligation and prescribe the events of default and the terms and conditions upon which any or all of the bonds shall become or may be declared due and payable before maturity and the terms and conditions upon which the declaration and its consequences may be waived.
- (11) Vest in a trustee or trustees within or without this Commonwealth in trust any property, rights, powers and duties as the authority may determine. These may include any or all of the rights, powers and duties of any trustee appointed by the holders of bonds or notes, including rights with respect to the sale or other disposition of notes and bonds of governmental units and other instruments and security pledged pursuant to a resolution or trust indenture for the benefit of the holders of bonds and the right, by suit or action, to foreclose any mortgage pledged pursuant to the resolution or trust indenture for the benefit of the holders of the bonds, notes or other obligations, and to limit the right of the holders of any bonds to appoint a trustee under this act and to limit the rights, powers and duties of the trustee.
- (12) Pay the costs or expenses incident to the enforcement of the bonds or the provisions of the resolution authorizing the issuance of those bonds, or the trust indenture securing the bonds or any covenant or agreement of the authority with the holders of the bonds, notes or other obligations.
- (13) Limit the rights of the holders of any bonds to enforce any pledge or covenant securing bonds.

(14) Make covenants other than or in addition to the covenants authorized by this act of like or different character and make covenants to do or refrain from doing any acts and things as may be necessary, or convenient and desirable, in order to better secure bonds or which, in the absolute discretion of the authority, will tend to make bonds more marketable, notwithstanding that the covenants, acts or things may not be enumerated herein.

Section 9. Nature and effect of pledges.

A pledge of revenues, receipts, moneys, funds or other property or instruments made by the authority shall be valid and binding from the time when the pledge is made. The revenues, receipts, moneys, funds or other property pledged and thereafter received by the authority shall be immediately subject to the lien of the pledge without its physical delivery or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether the parties have notice of the lien. Neither the resolution nor any other instrument by which a pledge under this section is created or evidenced need be filed or recorded except in the records of the authority.

Section 10. Financial assistance.

(a) Criteria for obtaining assistance.--In reviewing applications for financial assistance, the authority shall consider:

(1) Whether the project will improve the health, safety, welfare or economic well-being of the people of this Commonwealth.

(2) Whether the proposed project will lead to an effective or complete solution to the problems experienced with the water management and control supply, sewage treatment or storm water system to be aided, including compliance with State and Federal laws, regulations or standards. ((2) amended Dec. 16, 1992, P.L.1137, No.149)

(3) The cost-effectiveness of the proposed project in comparison with other alternatives, including other institutional, financial and physical alternatives.

(4) The consistency of the proposed project with other State and regional resource management and economic development plans.

(5) Whether the applicant has demonstrated its ability to operate and maintain the project in a proper manner.

(6) Whether the project encourages consolidation of water or sewer systems, where such consolidation would enable the customers of the systems to be more effectively and efficiently served.

(7) The availability of other sources of funds at reasonable rates to finance all or a portion of the project and the need for authority assistance to finance the project or to attract the other sources of funding.

(b) Financing priorities.--In assigning priorities for projects, the board shall consult with the Department of Commerce and the department. In addition to any requirements of Federal law imposed on the use of Federal funds, the board shall determine priorities based on factors which include, but are not limited to:

(1) Benefits to public health.

(2) The contribution to and impact of the project on economic development as well as social and environmental values.

(3) Benefits to public safety or welfare.

(4) Improvement in the ability of an applicant to come into compliance with State and Federal statutes, regulations and standards.

(5) Improvement in the adequacy or efficiency of the water management and control supply, sewage treatment or storm water system.

(6) The cost-effectiveness of the project.

(7) Whether the governmental unit to be served by a sewage treatment system is subject to construction or connection limitations issued by the department and the date that any such limitation was issued.

(8) Whether the project encourages consolidation of water or sewer systems, where such consolidation would enable the customers of the systems to be more effectively and efficiently served.

(9) Whether a storm water project is sponsored by more than one municipality and is located at strategic locations determined by the basin-wide studies undertaken under the act of October 4, 1978 (P.L.864, No.167), known as the Storm Water Management Act, or other joint municipal or county efforts.

(10) Whether a project will resolve known drainage or storm water-related problems.

((b) amended Dec. 16, 1992, P.L.1137, No.149)

(b.1) Storm water projects.--

(1) (Reserved).

(2) Subject to paragraph (4), a storm water project designed to manage storm water runoff shall be eligible for funding if any of the following are applicable:

(i) the project is located within a watershed for which a county has adopted a watershed storm water management plan and the municipality has adopted ordinances required to implement the plan as required by the Storm Water Management Act or as required by the National Pollutant Discharge Elimination System (NPDES) storm water permitting requirements;

(ii) the project is specifically designed to maintain and/or improve existing water quality and to comply with the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, or storm water permitting requirements; or

(iii) the project is located in a municipality which has enacted a storm water management ordinance that requires land owners and any person engaged in the alteration or development of land to implement measures to ensure that the maximum rate, volume and quality of storm water runoff is no greater after the development than prior to development activities as required by the Storm Water Management Act or The Clean Streams Law.

(3) ((3) deleted by amendment June 19, 2013, P.L.51, No.16)

(4) A storm water project to be undertaken by an entity other than a municipality shall comply with all of the following:

(i) the project shall be in compliance with ordinances, policies and plans adopted by the municipality where the project is located; and

(ii) the project shall be approved by other impacted municipalities as required by the board.

((b.1) amended June 19, 2013, P.L.51, No.16)

(b.2) Nonpoint source management program projects.--A project that is consistent with Pennsylvania's Nonpoint Source

Management Program Update, as required under section 319(b) of the Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. § 1329(b)), that has a water quality benefit as determined by the department, shall be eligible for funding. ((b.2) added June 19, 2013, P.L.51, No.16)

(c) Decision of board.--Establishment of priority for financial assistance under subsection (b) or (d) shall not be deemed to be a final action under 2 Pa.C.S. (relating to administrative law and procedure), nor shall it confer a right or duty upon the board or any other person. A decision as to an applicant's eligibility under subsection (a) may be appealed pursuant to 2 Pa.C.S., but the priority assigned the project may not be raised in that appeal. ((c) amended Dec. 16, 1992, P.L.1137, No.149)

(d) Small projects.--

(1) The board shall establish a program of assistance to water supply and sewage disposal systems serving communities with a population of 12,000 people or less or systems having hookups of 1,000 or less.

(2) The board shall establish a program to financially assist storm water projects for municipalities with a population of 12,000 people or less. In addition to other factors which the board in its discretion may consider in assigning priorities under this program, preference shall be given where the municipality impacted by the project:

(i) has no natural watercourse within its boundaries;

(ii) relies on methods of storm water control which do not comply with Federal or State rules, regulations or standards; or

(iii) has been found to be subject to karst sinkhole development or other geologic condition which poses a danger to person or property and which may be aggravated by uncontrolled storm water flows.

((d) amended June 19, 2013, P.L.51, No.16)

(e) Grants.--Grants shall be made only when the board, in its sole discretion, determines that the financial condition of the recipient is such that repayment of a loan is unlikely and that the recipient will not be able to proceed with the project without a grant. In considering grant applications, the authority may recommend, either before or after the determination of the board, that the recipient pursue other State grant programs, including, but not limited to, the Site Development program, the Federal Small Communities Block Grant program and the Federal Urban Development Action Grant program. Should the board determine that a grant is necessary from the authority, the board shall attempt to mix the grant funds with loan funds, if financially possible.

(f) Loans.--Subject to any agreements with the holders of bonds, the board shall have the power to set terms applicable to loans in any manner it deems appropriate, subject to the provisions of this subsection. The board may consider such factors as it deems relevant, including current market interest rates, the financial and economic distress of the area which the project serves, and the necessity to maintain the authority funds in a financially sound manner. Loans may be made based on the ability to repay the loan from future revenue to be derived from the project, by a mortgage or other property lien, or on any other fiscal matters which the authority deems appropriate. The board shall have the power to defer principal on loans for up to five years. In the event of a default on the repayment of a loan, the board may apply to the court of common

pleas of the county where the project is located for the appointment of a receiver to assume operation and supervision of the facility under the supervision of the court. The minimum rate of interest to be paid on any loan made pursuant to this act shall be 1%. The maximum rate of interest shall not exceed the following:

(1) For projects in counties whose unemployment rate exceeds the Statewide unemployment rate by 40% or more, 1% for the first five years and 25% of the bond issue rate for the remainder of the loan.

(2) For projects in counties whose unemployment rate exceeds the Statewide unemployment rate, but exceeds it by less than 40%, 30% of the bond issue rate for the first five years and 60% of the bond issue rate for the remainder of the loan.

(3) For all other projects, 60% of the bond issue rate for the first five years and 75% of the bond issue rate for the remainder of the loan.

(4) For projects located within municipalities for which unemployment rates exist which would qualify the project for lower interest rates than if the relevant county unemployment rate were used, the unemployment rate of that municipality may be used in determining the interest rate on the loan.

For purposes of this subsection, the phrase "unemployment rate of the county" shall mean the average unemployment rate for the county in the most recent calendar year for which data has been finalized. For the projects which serve multiple counties, the highest unemployment rate of the counties involved shall be used. The unemployment data utilized shall be data reported by the Department of Labor and Industry. For purposes of this subsection, the phrase "bond interest rate" shall be the rate of interest paid by the Commonwealth immediately preceding the date of the loan for the bonds issued under sections 16 and 17.

(g) Limitation on annual assistance.--The amount of assistance approved by the board under subsection (e) shall not in any fiscal year exceed the amount of interest earnings, State appropriations and any funds received specifically for grants which are deposited into the accounts of the authority. This limitation shall not apply to projects funded prior to January 1, 1989, but the total amount of assistance under subsection (e) prior to January 1, 1989, shall not exceed \$15,000,000, excluding moneys specifically appropriated by the General Assembly for grants.

(h) Other assistance.--The board shall provide by regulation for the use of other methods of financial assistance, including, but not limited to, bond and loan guarantees, and purchase or insurance of bonds if the board deems this to be an appropriate method to accomplish the purposes of this act.

(i) Limitation.--The provisions of other law notwithstanding, all projects eligible for assistance under this act shall be determined to be site development projects as referenced in the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code. In no case shall total assistance to any single project total more than \$11,000,000, or \$20,000,000 if a project serves more than one municipality, except that the board by a vote of at least nine members may authorize loans in excess of \$20,000,000 to comprehensive projects providing or proposing consolidated service to a region encompassing all or parts of four or more municipalities. Total assistance to a storm water project shall not exceed \$1,000 for each resident of the municipality or municipalities being served by the

project or \$10,000,000, whichever is less. ((i) amended Dec. 16, 1992, P.L.1137, No.149)

(j) Continuing education of operators.--No agreement with individuals or entities shall be valid in the absence of an agreement by the individuals or entities seeking assistance under this act to assure that the system operators are participating or will participate in continuing education programs developed by the department. If the board determines that the system operator of a system receiving assistance is not participating in continuing education programs, the board shall take all steps necessary to cease all financial assistance and recover all prior payments, including, but not limited to, the immediate repayment of any outstanding loans and interest and any grants. The provisions of this subsection shall not apply to cases where financial assistance is provided for storm water projects. ((j) amended June 19, 2013, P.L.51, No.16)

(k) Inspection of project and records.--

(1) The applicant shall allow the authority and its successors, agents and representatives the right, at all reasonable times during construction and after completion of the project, to enter upon and inspect the project and to examine and make copies of the applicant's books, records, accounting data and other documents pertaining to the project and the financial condition of the applicant.

(2) The applicant may be required by the board or its agent to have prepared independent audits of its financial documents and conditions and submit a certified copy of the audits to the board.

(l) Financial analysis.--The financial analysis used by the board to determine the need of all applicants for financial assistance shall include, but not be limited to, the following:

(1) Fair and reasonable costs of wastewater treatment or of supplying drinking water or of controlling storm water incurred by comparable systems.

(2) The incomes of affected ratepayers and their ability to pay increased rates necessary to complete the proposed projects.

(3) Other sources of financing available to individuals or entities seeking assistance under this act.

(4) A determination that any financial assistance provided by this act will not be used to supplant financial resources already available to the applicant.

((l) amended Dec. 16, 1992, P.L.1137, No.149)

(m) Refinancing limitation.--Financial assistance shall not be available under this act for refinancing of any project except that the Water Pollution Control Revolving Fund may be used to the extent authorized by the Water Quality Act of 1987 (Public Law 100-4, 101 Stat. 7) for projects commenced after March 7, 1985.

(n) Steel procurement.--Every application shall contain a certification that the applicant shall, in every contract for the acquisition, repair, construction, reconstruction, rehabilitation, extension, expansion, improvement, alteration or maintenance of any water supply or sewage treatment system, comply with the provisions of the act of March 3, 1978 (P.L.6, No.3), known as the Steel Products Procurement Act.

Compiler's Note: The Department of Commerce, referred to in subsec. (b), was renamed the Department of Community and Economic Development by Act 58 of 1996.

Compiler's Note: The Department of Environmental Resources, referred to in subsec. (j), was abolished by Act 18 of

1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 11. Comprehensive water facilities plan.

Not later than December 31, 1990, the department shall submit to the authority a comprehensive plan for wastewater disposal and piped drinking water facilities in this Commonwealth. In preparing the plan, the department shall consult with county commissioners, multicounty planning agencies and other applicable local officials and agencies. The plan should include, but not be limited to:

(1) An inventory of the existing facilities located within this Commonwealth, including, but not limited to, identification of the type, capacity, location, current condition and year constructed.

(2) An inventory of drinking water and sewage construction needs.

(3) Identification of the major issues and problems that the Commonwealth must deal with in order to address its water infrastructure needs, including financial as well as nonfinancial issues.

(4) Recommendations for programs to encourage the construction of drinking water and sewage treatment facilities. This may include innovative financing mechanisms, alternative technology and ownership structures, and technical assistance.

(5) Identification of emerging issues, trends and problems that might affect these facilities.

The plan shall be updated at least every five years. The board shall consider the plan as a guide when evaluating applications considered for approval after the completion of the plan.

Section 12. Audits.

The accounts and books of the authority, including its receipts, disbursements, contracts, mortgages, investments and other matters relating to its finances, operation and affairs, shall be examined and audited by the Auditor General.

Section 13. Annual report.

The board shall provide the Governor and the General Assembly with an annual report detailing all projects funded under section 10. Each annual report shall be published and maintained on the authority's publicly accessible Internet website and may be submitted to the Governor and General Assembly by electronic mail.

(13 amended June 19, 2013, P.L.51, No.16)

Section 14. Expedited approval of rate relief.

For the limited and special purpose of ensuring repayment of principal and interest on loans made pursuant to this act, the Pennsylvania Public Utility Commission shall approve such security issues, affiliated interest agreements and rate increase requests by applicants that are regulated utilities as are necessary and appropriate. For this purpose, the Pennsylvania Public Utility Commission shall establish such expedited practices, procedures and policies as necessary to facilitate and accomplish repayment of the loans. Nothing in this act shall be construed as to require approval of rate increases greater than that necessary to accomplish the repayment of loans made pursuant to this act.

Section 15. Transfer of Water Facilities Loan Board.

(a) Removal of members.--All existing members of the Water Facilities Loan Board shall cease to hold office on the day that the Governor certifies by publication in the Pennsylvania

Bulletin the existence of a quorum on the board created under section 4.

(b) Board of directors to serve as Water Facilities Loan Board.--For purposes of satisfying all outstanding obligations of the Water Facilities Loan Board and for purposes of collecting loan and interest repayments, the board established in section 4 shall constitute the membership of the Water Facilities Loan Board.

(c) Transfer of function.--All remaining unencumbered funds, rights, powers, duties, obligations, liabilities, records and equipment of the Water Facilities Loan Board are transferred to the authority.

Section 16. Referendum.

(a) General rule.--Pursuant to the provisions of section 7(a)(3) of Article VIII of the Constitution of Pennsylvania, the question of incurring indebtedness of \$300,000,000 for loans for the acquisition, repair, construction, reconstruction, rehabilitation, extension, expansion and improvement of water supply and sewage treatment systems, subject to implementation through this act, shall be submitted to the electors at the next primary, municipal or general election following the effective date of this act.

(b) Certification.--The Secretary of the Commonwealth shall forthwith certify the question to the county boards of elections.

(c) Form of question.--The question shall be in substantially the following form:

Do you favor the incurring of indebtedness by the Commonwealth of \$300,000,000 for use as loans to acquire, repair, construct, reconstruct, rehabilitate, extend, expand and improve water supply and sewage treatment systems?

Compiler's Note: The voters approved the incurring of indebtedness of \$300,000,000 at the general election held on April 26, 1988.

Section 17. Bonds.

(a) Issuance of general obligation bonds.--As evidence of the indebtedness if authorized under section 16, general obligation bonds of the Commonwealth shall be issued from time to time to fund and retire notes issued pursuant to section 16 to carry out the purposes of this act, or both, for such total amounts, in such form, in such denominations and subject to such terms and conditions of issue, redemption and maturity, rate of interest and time of payment of interest as the issuing officials direct except that the latest stated maturity date shall not exceed 30 years from the date of the debt first issued for each series.

(b) Execution of bonds.--All bonds and notes issued under the authority of section 16 shall bear facsimile signatures of the issuing officials and a facsimile of the great seal of the Commonwealth and shall be countersigned by a duly authorized loan and transfer agent of the Commonwealth.

(c) Direct obligation of Commonwealth.--All bonds and notes issued in accordance with section 16 shall be direct obligations of the Commonwealth, and the full faith and credit of the Commonwealth are hereby pledged for the payment of the interest thereon as it becomes due and the payment of the principal at maturity. The principal of and interest on the bonds and notes shall be payable in lawful money of the United States of America.

(d) Exemption from taxation.--All bonds and notes issued under the provisions of this section shall be exempt from taxation for State and local purposes.

(e) Form of bonds.--The bonds may be issued as coupon bonds or registered as to both principal and interest as the issuing officials may determine. If interest coupons are attached, they shall contain the facsimile signature of the State Treasurer.

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

(g) Refunding bonds.--The issuing officials are authorized to provide, by resolution, for the issuance of refunding bonds for the purpose of refunding any bonds issued under this section and then outstanding, either by voluntary exchange with the holders of the outstanding bonds, or to provide funds to redeem and retire the outstanding bonds with accrued interest, any premium payable thereon and the costs of issuance and retirement of bonds, at maturity or at any call date. The issuance of the refunding 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 provisions of this section, insofar as they may be applicable. Refunding bonds may be issued by the issuing officials to refund bonds originally issued or to refund bonds previously issued for refunding purposes.

(h) Quorum.--Whenever any action is to be taken or decision made by the Governor, the Auditor General and the State Treasurer acting as issuing officials and the three officers are not able unanimously to agree, the action or decision of the Governor and either the Auditor General or State Treasurer shall be binding and final.

(i) Public sale.--Whenever bonds are issued, they shall be offered for sale at not less than 98% of the principal amount and accrued interest and shall be sold by the issuing officials to the highest and best bidder or bidders after due public advertisement on such terms and conditions and upon such open competitive bidding as the issuing officials shall direct. The manner and character of the advertisement and the time of advertising shall be prescribed by the issuing officials.

(j) Private sale.--Any portion of any bond issue so offered and not sold or subscribed for may be disposed of by private sale by the issuing officials in such manner and at such prices, not less than 98% of the principal amount and accrued interest, as the issuing officials shall direct. No commission shall be allowed or paid for the sale of any bonds issued under the authority of this section.

(k) Bond series.--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.

(l) Temporary bonds.--Until permanent bonds can be prepared, the issuing officials may in their discretion issue, in lieu of permanent bonds, temporary bonds in such form and with such

privileges as to registration and exchange for permanent bonds as may be determined by the issuing officials.

(m) Disposition and use of proceeds.--The proceeds realized from the sale of bonds and notes, except funding bonds, refunding bonds and renewal notes, under the provisions of this section are specifically dedicated to the purposes of the referendum to be implemented by this act and shall be paid into the special funds established in the State Treasury in such amounts as may be specified by the board pursuant to section 5(c). The proceeds shall be paid by the State Treasurer periodically to the board to expend them at such times and in such amounts as may be necessary to satisfy the funding needs of the board. The proceeds of the sale of funding bonds, refunding bonds and renewal notes shall be paid to the State Treasurer and applied to the payment of principal, the accrued interest and premium, if any, and costs of redemption of the bonds and notes for which such obligations shall have been issued.

(n) Investment of funds.--Pending their application to the purposes authorized, moneys held or deposited by the State Treasurer may be invested or 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 funds established by the board in section 5(c) in such amounts as may be specified by the board pursuant to that section.

(o) Registration of bonds.--The Auditor General shall prepare the necessary registry book to be kept in the office of the duly authorized loan and transfer agent of the Commonwealth for the registration of any bonds, at the request of owners thereof, according to the terms and conditions of issue directed by the issuing officials.

(p) Expenses of preparation for issue and sale of bonds and notes.--There is hereby appropriated to the State Treasurer from the proceeds of the bonds and notes issued as much money as may be necessary for all costs and expenses in connection with the issue of and sale and registration of the bonds and notes in connection with this act.

Section 18. Appropriations.

(a) Appropriation.--The sum of \$500,000, or as much thereof as may be necessary, is hereby appropriated from the General Fund to the Pennsylvania Infrastructure Investment Authority as a continuing appropriation to carry out the provisions of this act. This appropriation shall lapse June 30, 1989.

(b) Continuing appropriation.--The General Assembly hereby appropriates on a continuing basis to the authority funds as authorized by section 5 in order to carry out the purposes of this act, including the payment of the administrative expenses of the authority.

Section 19. Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 20. Repeals.

(a) Absolute.--On the date that the Governor certifies by publication in the Pennsylvania Bulletin the existence of a quorum on the board created under section 4, the following acts or parts of acts are repealed:

The definitions of "community water supply system," "department," "flood control facility," "port facility," "project" and "water facility" in section 7502 and sections 7503, 7504(b), (d) and (e), 7506, 7510, 7511, 7512, 7513, 7514, 7515 and 7516 of Title 32 of the Pennsylvania Consolidated Statutes (relating to forests, waters and State parks).

(b) Limited.--The following acts or parts of acts are repealed:

(1) Any project itemized in a capital budget which was funded by current revenues without the use of bond obligations.

(2) Sections 1, 1.1, 2 and 3 of the act of August 20, 1953 (P.L.1217, No.339), entitled "An act providing for payments by the Commonwealth to municipalities which have expended money to acquire and construct sewage treatment plants in accordance with the Clean Streams Program and the act, approved the twenty-second day of June, one thousand nine hundred thirty-seven (Pamphlet Laws 1987), and making an appropriation," as applied to projects funded under the provisions of this act.

(c) Inconsistent.--All other acts and parts of acts are repealed insofar as they are inconsistent with this act. Section 21. Effective date.

This act shall take effect immediately.