

**CAPITAL FACILITIES DEBT ENABLING ACT - BORROWING LIMITATIONS, BOND TERMS
AND CONDITIONS, CAPITAL DEBT FUND, ETC.**

Act of Jul. 4, 2004, P.L. 516, No. 67

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HB 2472

AN ACT

Amending the act of February 9, 1999 (P.L.1, No.1), entitled "An act providing for borrowing for capital facilities; conferring powers and duties on various administrative agencies and officers; making appropriations; and making repeals," adding and amending definitions; and further providing for borrowing limitations, for bond terms and conditions, for the Capital Debt Fund, for registration of bonds, for appropriation for and limitation on redevelopment assistance capital projects and for funding and administration of redevelopment assistance capital projects.

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

Section 1. Section 302 of the act of February 9, 1999 (P.L.1, No.1), known as the Capital Facilities Debt Enabling Act, amended October 28, 2002 (P.L.889, No.130), is amended to read:

Section 302. Definitions.

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

"Acquisition cost." The cost of acquiring:

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

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

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

- (1) Is an undertaking to construct, repair, renovate, improve, equip, furnish or acquire any:
 - (i) building, structure, facility or physical public betterment or improvement;

- (ii) land or rights in land; or
- (iii) furnishings, machinery, apparatus or equipment for a building, structure, facility or physical public betterment or improvement.

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

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

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

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

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

"Community college projects." Projects at an institution now or hereafter created pursuant to Article XIX-A of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, or the act of August 24, 1963 (P.L.1132, No.484), known as the Community College Act of 1963.

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

"Construction cost." Obligations incurred:

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

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

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

(4) for the payment of damages incurred by others incident to or consequent upon construction under paragraph

(1) which the Commonwealth or its agency or authority is under legal obligation to pay or desires to pay in settlement of a disputed claim of liability.

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

(1) that portion of debt which is to be repaid from

charges made to the public for the use of the capital projects financed, as such portion of debt may be determined by the Auditor General;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

being funded.

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

"Hospital." As defined in section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

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

"Net debt."

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

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

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

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

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

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

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

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

(1) Are facilities, other than housing units, highways, bridges, waste disposal facilities, sewage facilities or water facilities[, which cannot obtain funding under other Federal or State programs]. **This paragraph includes:**

(i) **Water or sewer infrastructure or bridges or roads when included as part of a business or industrial park facility.**

(ii) **Hospital facilities and capital improvements for hospital facilities.**

(2) Are economic development projects which generate substantial increases in employment, tax revenues or other measures of economic activity. This paragraph includes projects with cultural, historical or civic significance.

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

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

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

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

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

(iii) toward which State funds from other programs may not be used[.] ; **and**

(iv) **toward which funds from Federal sources may be used.**

(6) Have a total project cost [as follows:

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

(A) counties of the first class; or

(B) counties of the second class.

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

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

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

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

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

at least \$1,000,000.

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

(i) A redevelopment authority.

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

(v) Any public authority established pursuant to the laws of this Commonwealth.

(vi) An industrial development agency which has been certified as an industrial development agency by the Pennsylvania Industrial Development Authority Board pursuant to the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act, and which is itself or which is acting through a wholly owned subsidiary which is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

The term also includes a fire truck and firefighting equipment to the extent that the request for assistance does not exceed \$50,000.

["Redevelopment assistance projects." Projects of the type which the Department of Community and Economic Development is authorized to finance by capital grants under the act of May 20, 1949 (P.L.1633, No.493), known as the Housing and Redevelopment Assistance Law, and Reorganization Plan No.2 of 1966.]

"Replacement notes." Notes:

(1) the net proceeds of which are used to pay principal, accrued interest and premium of previously issued notes or replacement notes; and

(2) which evidence the same temporary borrowing of the Commonwealth as the notes or replacement notes replaced.

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

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

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

Section 2. Section 305 of the act is amended to read:

Section 305. Constitutional limitations, authorizations,

issuing officials.

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

Section 3. Section 307(c) of the act is amended by adding a paragraph to read:

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

* * *

(c) Terms and conditions.--

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

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

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

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

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

(ii) The term of the debt shall be to the end of the longest estimated useful life for the purpose of determining the first date for the retirement of principal. At the end of the estimated useful life of each project, the aggregate principal retirements required to be made at or before that date shall exceed:

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

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

(4.1) The issuing officials may enter into agreements or contracts to insure or secure payment of principal, interest or the purchase price of bonds which, in the judgment of the issuing officials, will assist in managing the interest costs of the debt of the Commonwealth.

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

* * *

Section 4. Sections 311 and 314 of the act are amended to read:

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

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

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

Section 314. Registration of bonds.

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

Section 5. Section 317 of the act, amended December 23, 2003 (P.L.357, No.49), is amended to read:

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

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

(b) Limitation.--The maximum amount of redevelopment assistance capital projects undertaken by the Commonwealth for which obligations are outstanding shall not exceed, in aggregate, [\$1,510,000,000] **\$2,150,000,000** .

Section 6. Section 318 of the act is amended to read:

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

(a) Officers.--The Secretary of the Budget[, in consultation with the Secretary of Community and Economic Development,] **shall review and** shall approve or disapprove **applications for** redevelopment assistance capital projects.

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

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

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

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

(f) Bids.--[The solicitation of a minimum of three written bids is required for all general contracted work in redevelopment assistance capital projects.] **Notwithstanding any other provision of law, the solicitation of a minimum of three written bids for all contracted construction work on redevelopment assistance capital projects shall be the sole requirement for the composition, solicitation, opening and award of bids on such projects. Notwithstanding the foregoing, the construction work shall be performed subject to the act of March 3, 1978 (P.L.6, No.3), known as the Steel Products Procurement Act.**

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

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

(i) Grant administration.--In the event any applicant does not administer the grant, the applicant shall enter into a cooperation agreement with the entity administering the grant, which agreement shall be subject to the approval of the Office of the Budget.

Section 7. This act shall take effect immediately.

APPROVED--The 4th day of July, A. D. 2004.

EDWARD G. RENDELL