

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**  
**No. 1617** Session of  
1983

INTRODUCED BY GALLAGHER AND FREIND, OCTOBER 19, 1983

REFERRED TO COMMITTEE ON EDUCATION, OCTOBER 19, 1983

AN ACT

1 Amending the act of December 6, 1967 (P.L.678, No.318), entitled  
2 "An act to promote the education and welfare of the people of  
3 the Commonwealth of Pennsylvania; to provide educational  
4 facilities at nonprofit institutions of higher education in  
5 the Commonwealth of Pennsylvania; and creating the  
6 Pennsylvania Higher Educational Facilities Authority as a  
7 body corporate and politic with power to acquire, construct,  
8 improve, equip, furnish, operate, lease, and dispose of  
9 projects; authorizing and regulating the issuance of notes  
10 and bonds and the payment thereof by said authority; and  
11 providing that no debt, obligation, or credit of the  
12 Commonwealth shall be incurred in the exercise of any powers  
13 granted by this act," providing for the financing of projects  
14 through loans by the authority.

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

17 Section 1. Section 3(4) and (8) of the act of December 6,  
18 1967 (P.L.678, No.318), known as The Pennsylvania Higher  
19 Educational Facilities Authority Act of 1967, are amended and a  
20 clause is added to read:

21 Section 3. Definitions.--As used in this act:

22 \* \* \*

23 (4) "Project" means any educational facility which the

1 authority is authorized to acquire, construct, finance, improve,  
2 install, maintain or operate under the provisions of this act;

3 \* \* \*

4 (8) "Cost of a project" means and includes, but shall not be  
5 limited to, all or any part of the cost of construction,  
6 acquisition, alteration, enlargement, reconstruction and  
7 rehabilitation of a project, including all lands, structures,  
8 real or personal property, rights, rights of way, roads,  
9 franchises, easements and interests acquired or used for or in  
10 connection with a project, the cost of demolishing or removing  
11 any buildings or structures on land so acquired, including the  
12 cost of acquiring any lands to which such buildings or  
13 structures may be moved or relocated, the cost of all utility  
14 lines, structures or equipment, the charges, interest prior to,  
15 during and for a period of six months after completion of such  
16 construction and acquisition, provisions for reserves for  
17 principal and interest and for extensions, enlargements,  
18 additions and improvements, cost of architectural, engineering,  
19 financial and legal services, plans, specifications, studies,  
20 surveys, estimates of cost and of revenues, administrative  
21 expenses, necessary or incident to determining the feasibility  
22 or practicability of constructing the project and such other  
23 expense as may be necessary or incident to the construction  
24 [and], acquisition or financing of the project[, the financing  
25 of such construction and acquisition] and the placing of the  
26 project in operation[.];

27 (9) "Financing" or "to finance" means and includes the  
28 lending or providing of funds to a college for payment of the  
29 cost of a project.

30 Section 2. The introductory paragraph and clauses (7), (8)

1 and (14) of section 5 of the act are amended and a clause is  
2 added to read:

3 Section 5. Purposes and General Powers.--The authority is  
4 created for the purpose of acquiring, constructing, financing,  
5 improving, maintaining and operating any educational facility.

6 The authority is hereby granted and shall have and may  
7 exercise all the powers necessary or convenient for the carrying  
8 out of the aforesaid purposes, including but without limiting  
9 the generality of the foregoing, the following rights and  
10 powers:

11 \* \* \*

12 (5.1) To finance projects by making loans to colleges, which  
13 loans may be evidenced by, and secured as may be provided in,  
14 loan agreements, mortgages, security agreements or any other  
15 contracts, instruments or agreements, which contracts,  
16 instruments or agreements may contain such provisions as are  
17 referred to in clause (4) or such other provisions as the  
18 authority shall determine necessary or desirable for the  
19 security or protection of the authority or its bondholders. All  
20 such provisions shall be a part of the contract with the holders  
21 of the bonds of the authority issued with respect to such  
22 project, and all colleges are hereby authorized to enter into  
23 such contracts, instruments or agreements containing the  
24 provisions herein authorized, anything in the charters of such  
25 colleges or in any other law to the contrary notwithstanding.

26 \* \* \*

27 (7) To obtain from the State Public School Building  
28 Authority, for a fee, those executive, fiscal, and  
29 administrative services, which are not available from the  
30 college for whose use the project is being constructed or

1 financed, as may be required to carry out functions of the  
2 authority under this act;

3 (8) To fix, alter, charge and collect rentals and other  
4 charges [for the use] in respect of any educational facility  
5 [of,] or for the services rendered by[, ] the authority, at  
6 reasonable rates to be determined by it for the purpose of  
7 providing for the payment of the expenses of the authority, not  
8 provided for otherwise, the acquisition, construction,  
9 financing, improvement, repair, equipping and furnishing,  
10 maintenance and operation of any educational facility, the  
11 payment of the principal of, and interest on, its obligations,  
12 and to fulfill the terms and provisions of any agreements made  
13 with the purchasers or holders of any such obligations;

14 \* \* \*

15 (14) Notwithstanding any other provisions contained in this  
16 act, to combine for financing purposes, with the consent of all  
17 [leasing] colleges involved, the project or the projects and  
18 some or all future projects of any two or more colleges, and to  
19 provide reserves, out of lease rentals or other funds made  
20 available for the purpose, for debt service, maintenance,  
21 repairs and replacements;

22 \* \* \*

23 Section 3. Sections 6(c) and (d), 12 and 14 of the act are  
24 amended to read:

25 Section 6. Purposes and Powers, Bonds.--\* \* \*

26 (c) Any trust indenture, resolution or resolutions  
27 authorizing any bonds may contain provisions which shall be part  
28 of the contract with the holders thereof as to (i) pledging all  
29 or any of the revenues, rentals or receipts and contract rights  
30 of the authority from such projects or properties, as the

1 college or colleges owning, using or leasing the same may  
2 approve; (ii) the acquisition, construction, financing,  
3 improvement, operation, extension, enlargement, maintenance and  
4 repair, of any project or projects, and the duties of the  
5 authority with reference thereto; (iii) the terms and provisions  
6 of the bonds; (iv) limitations on the purposes to which the  
7 proceeds of the bonds, then or thereafter to be issued, under  
8 such indenture or resolution, or of any loan or grant by the  
9 United States may be applied; (v) the rate of rentals and other  
10 charges for use of any educational facility of, or for the  
11 services rendered by the authority, including limitations upon  
12 the power of the authority to modify any leases or other  
13 agreements, pursuant to which any rentals or other charges are  
14 payable; (vi) the setting aside of reserves or sinking funds and  
15 the regulation and disposition thereof, provided that any income  
16 received from the investment of such reserves or sinking funds  
17 shall be applied in reduction of the rentals or other charges  
18 payable by the college for whose project the same are created;  
19 (vii) limitations on the issuance of additional bonds; (viii)  
20 the terms and provisions of any deed [or] of trust or indenture  
21 securing the bonds, or under which the same may be issued; and  
22 (ix) any other or additional agreements with the holders of the  
23 bonds.

24 (d) The authority may enter into any deeds of trust,  
25 indentures or other agreements with any bank or trust company,  
26 or other person or persons in the United States having power to  
27 enter into the same, including any Federal or other governmental  
28 agency, as security for such bonds, and may assign and pledge  
29 all or any of the revenues, rentals, receipts, and contract  
30 rights of the authority thereunder. Such deed of trust,

1 indenture or other agreement may contain such provisions as may  
2 be customary in such instruments, or as the authority may  
3 authorize, including (but without limitation) provisions as to  
4 (i) the acquisition, construction, financing, improvement,  
5 operation, maintenance, and repair of any project or projects,  
6 and the duties of the authority with reference thereto; (ii) the  
7 application of funds and the safeguarding of funds on hand or on  
8 deposit; (iii) the rights and remedies of said trustee and the  
9 holders of the bonds (which may include restrictions upon the  
10 individual right of action of such bondholders); and (iv) the  
11 terms and provisions of the bonds, or the resolutions  
12 authorizing the issuance of the same: Provided further, That  
13 nothing in this act shall prevent the authority from obtaining  
14 temporary financing where necessary or desirable for any project  
15 by issuance of negotiable notes or other obligations, the  
16 maturity of which shall not exceed five years from the date of  
17 issue, and which shall be paid, as to both principal and  
18 interest, from proceeds of sale of bonds of the authority, in  
19 anticipation of which said notes or obligations were issued.

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

23 Section 12. Competition in Award of Contracts.--If any  
24 project or any portion thereof, or any improvement thereof,  
25 shall be constructed pursuant to a contract, and the estimated  
26 cost thereof exceeds twelve thousand dollars (\$12,000), such  
27 contract shall be awarded to the lowest responsible bidder after  
28 due advertisement and subject to the provisions of law  
29 applicable to the Department of Property and Supplies. The  
30 authority may, to the same extent, and under the same rules and

1 regulations applicable to the Department of Property and  
2 Supplies, make rules and regulations for the submission of bids  
3 and the construction or improvement of any project or portion  
4 thereof: Provided, however, That where there exists an agreement  
5 whereby the college may acquire legal title to the said project,  
6 contracts for construction, reconstruction, repair or work of  
7 any nature, or purchase of furnishings, machinery or equipment  
8 shall, if the college so requests, be awarded without regard to  
9 the limitations of this section 12 or any other statutory  
10 provision or regulation requiring competitive bidding. No  
11 contract shall be entered into for the construction or  
12 improvement of any project or portion thereof, or for the  
13 purchase of materials, unless the contractor shall give an  
14 undertaking with a sufficient surety or sureties approved by the  
15 authority, and in an amount fixed by the authority, for the  
16 faithful performance of the contract, and such contract shall be  
17 accompanied by an additional bond for the protection of those  
18 who furnish labor and materials, for such amount and subject to  
19 the same terms and conditions as required by the authority. All  
20 construction contracts shall provide, among other things, that  
21 the person or corporation entering into such contract with the  
22 authority will pay for all materials furnished [in] and services  
23 rendered, for the performance of the contract, and that any  
24 person or corporation furnishing such materials or rendering  
25 such services may maintain an action to recover for the same  
26 against the obligor in the undertaking as though such person or  
27 corporation was named therein, provided the action is brought  
28 within one year after the time the cause of action accrued.  
29 Nothing in this section shall be construed to limit the power of  
30 the authority to acquire or construct any project or portion

1 thereof or any addition, betterment, or extension thereto,  
2 directly by the officers, agents and employes of the authority,  
3 or otherwise than by contract.

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

12 Nothing in this section 12 shall be construed as precluding  
13 the transfer to the authority by purchase or otherwise of any  
14 completed project, or any project in course of construction and  
15 the assignment to the authority of the relevant contracts for  
16 constructing, furnishing or equipping such projects and the  
17 acceptance thereof by the authority.

18 Section 14. Limitation of Powers.--The Commonwealth does  
19 hereby pledge to, and agree with, any person, firm or  
20 corporation or Federal or other governmental agency subscribing  
21 to, or acquiring, the bonds to be issued by the authority for  
22 the acquisition, construction, extension, financing,  
23 improvement, or enlargement of any project, or part thereof, or  
24 for refunding purposes, that the Commonwealth will not limit or  
25 alter the rights hereby vested in the authority, or limit or  
26 alter any provisions for the security and protection of the  
27 authority and its bondholders contained in this act or as now  
28 provided by law, until all bonds at any time issued, together  
29 with the interest thereon, fully are met and discharged. The  
30 Commonwealth further does pledge to and agree with the United



1 States and any other Federal or other governmental agency that,  
2 in the event that any such agency shall construct or contribute  
3 any funds for the acquisition, construction, extension,  
4 financing, improvement or enlargement of any project or any  
5 portion thereof, the Commonwealth will not alter or limit the  
6 rights and powers of the authority in any manner which would be  
7 inconsistent with the continued maintenance and operation of the  
8 project, or the improvement thereof, or which would be  
9 inconsistent with the due performance of any agreements between  
10 the authority and any such agency, and the authority shall  
11 continue to have and may exercise all power herein granted so  
12 long as the same shall be necessary or desirable for the  
13 carrying out of the purposes of this act and the purposes of the  
14 United States and any Federal or other governmental agency in  
15 the construction or improvement or enlargement of any project or  
16 such portion thereof.

17 Section 4. This act shall take effect immediately.