

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2472 Session of
2004

INTRODUCED BY D. EVANS, DeWEESE AND VEON, MARCH 23, 2004

REFERRED TO COMMITTEE ON APPROPRIATIONS, MARCH 23, 2004

AN ACT

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

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

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

17 Section 302. Definitions.

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

21 "Acquisition cost." The cost of acquiring:

22 (1) buildings;

1 (2) structures;
2 (3) facilities;
3 (4) property, real, personal or mixed, tangible or
4 intangible; or
5 (5) any other interest;
6 necessary or desirable in connection with a capital project,
7 whether the acquisition be by purchase or by condemnation,
8 including the amount of an award or final judgment in a
9 proceeding to acquire by condemnation lands, rights-of-way,
10 rights-of-slope, property rights, franchises, easements or other
11 interests as deemed necessary or convenient in connection with
12 the acquisition or construction of a project, and costs of
13 options and partial payments on and under options.

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

16 (1) Is an undertaking to construct, repair, renovate,
17 improve, equip, furnish or acquire any:

18 (i) building, structure, facility or physical public
19 betterment or improvement;

20 (ii) land or rights in land; or

21 (iii) furnishings, machinery, apparatus or equipment
22 for a building, structure, facility or physical public
23 betterment or improvement.

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

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

28 (4) Has an estimated financial cost in excess of
29 \$100,000. This paragraph does not apply to original equipment
30 or furnishings for previously authorized public improvement

1 projects.

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

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

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

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

22 "Construction cost." Obligations incurred:

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

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

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

30 (4) for the payment of damages incurred by others

1 incident to or consequent upon construction under paragraph
2 (1) which the Commonwealth or its agency or authority is
3 under legal obligation to pay or desires to pay in settlement
4 of a disputed claim of liability.

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

14 (1) that portion of debt which is to be repaid from
15 charges made to the public for the use of the capital
16 projects financed, as such portion of debt may be determined
17 by the Auditor General;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 "Flood control projects." Projects of the type which the
30 Water and Power Resources Board is authorized to construct,

1 improve, equip, maintain, acquire or operate under the
2 provisions of the act of August 7, 1936 (1st Sp.Sess., P.L.106,
3 No.46), referred to as the Flood Control Law.

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

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

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

14 "Hospital." As defined in section 802.1 of the act of July
15 19, 1979 (P.L.130, No.48), known as the Health Care Facilities
16 Act.

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

19 "Net debt."

20 (1) The aggregate principal amount of all debt; plus

21 (2) the amount of any past due and unpaid interest on
22 that debt; minus

23 (3) all funds held exclusively for the payment of that
24 principal and past due interest.

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

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

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

4 ["Other capital projects." Only that undertaking to equip
5 and furnish those public improvement projects which are
6 specifically enumerated under the heading of "Other Capital
7 Projects" in section 3(d) of the act of July 20, 1968 (P.L.560,
8 No.218), known as the Capital Budget Act for the 1968-1969
9 Fiscal Year. Upon final completion of the undertakings
10 authorized by section 3(d) of that act, no equipment or
11 furnishing undertaking or any other undertaking or project shall
12 be listed in any capital budget act for the fiscal year 1969-
13 1970 or any fiscal year thereafter under the heading of "Other
14 Capital Projects"; but if the undertaking or project comes
15 within the meaning of a capital project, it shall be listed in
16 future capital budget acts as a capital project under one of the
17 categories enumerated in paragraph (2) of the definition of
18 "capital project."

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

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

1 maintain, acquire or operate, including community college
2 projects.

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

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

9 (i) Water and sewer infrastructure, bridges and
10 roads when included as part of a business or industrial
11 park facility.

12 (ii) Hospital facilities and capital improvements
13 for hospital facilities.

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

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

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

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

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

27 (ii) toward which the only noncash non-State
28 participation permitted is land or fixed assets which
29 have a substantial useful life and are directly related
30 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.]

1 (iii) A general purpose unit of local government.

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

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

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

19 The term also includes a fire truck and firefighting equipment
20 to the extent that the request for assistance does not exceed
21 \$50,000.

22 ["Redevelopment assistance projects." Projects of the type
23 which the Department of Community and Economic Development is
24 authorized to finance by capital grants under the act of May 20,
25 1949 (P.L.1633, No.493), known as the Housing and Redevelopment
26 Assistance Law, and Reorganization Plan No.2 of 1966.]

27 "Replacement notes." Notes:

28 (1) the net proceeds of which are used to pay principal,
29 accrued interest and premium of previously issued notes or
30 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

1 Code] this act, money necessary to carry out the purposes of
2 debt-authorizing acts passed in accordance with the provisions
3 of this chapter.

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

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

8 * * *

9 (c) Terms and conditions.--

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

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

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

30 (4) If debt is incurred in one issue of bonds to provide

1 funds for and towards the financial cost of capital projects
2 having estimated useful lives of varying length, the
3 following shall apply:

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

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

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

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

20 (4.1) The issuing officials are authorized to enter into
21 the following that in the judgment of the issuing officials
22 will assist in managing the interest costs of the debt of the
23 Commonwealth:

24 (i) Interest rate exchange agreements, interest rate
25 cap and floor agreements, forward agreements and other
26 similar agreements.

27 (ii) Contracts to insure or secure payments of
28 principal, interest or the purchase price of bonds.

29 (5) The issuing officials are authorized to carry out
30 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

1 in the fiscal year of the purchase. If all or any part of any
2 bonds issued under this chapter are purchased by the
3 Commonwealth, they shall be canceled and returned to the State
4 Treasurer as canceled and paid bonds. Thereafter, all payment of
5 interest on the bonds shall cease; and the canceled bonds and
6 coupons shall be destroyed in accordance with the act of April
7 27, 1925 (P.L.319, No.180), entitled, "An act relating to the
8 destruction of cancelled or unused bonds or other evidences of
9 indebtedness of this Commonwealth."

10 Section 314. Registration of bonds.

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

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

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

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

28 (b) Limitation.--The maximum amount of redevelopment
29 assistance capital projects undertaken by the Commonwealth for
30 which obligations are outstanding shall not exceed, in

1 aggregate, [\$1,510,000,000] \$2,150,000,000.

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

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

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

9 (b) Time period.--State funding for approved redevelopment
10 assistance capital projects shall be paid over not less than a
11 36-month period unless the Secretary of the Budget authorizes a
12 shorter period.

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

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

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

27 (f) Bids.--[The solicitation of a minimum of three written
28 bids is required for all general contracted work in
29 redevelopment assistance capital projects.] Notwithstanding any
30 other provision of law, the solicitation of a minimum of three

1 written bids for all contracted construction work on
2 redevelopment assistance capital projects shall be the sole
3 requirement for the composition, solicitation, opening and award
4 of bids on such projects. Notwithstanding the foregoing, the
5 construction work shall be performed subject to the act of March
6 3, 1978 (P.L.6, No.3), known as the Steel Products Procurement
7 Act.

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

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

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

24 Section 7. This act shall take effect immediately.