

No. 1984-185

AN ACT

SB 1445

Amending the act of December 6, 1967 (P.L.678, No.318), entitled "An act to promote the education and welfare of the people of the Commonwealth of Pennsylvania; to provide educational facilities at nonprofit institutions of higher education in the Commonwealth of Pennsylvania; and creating the Pennsylvania Higher Educational Facilities Authority as a body corporate and politic with power to acquire, construct, improve, equip, furnish, operate, lease, and dispose of projects; authorizing and regulating the issuance of notes and bonds and the payment thereof by said authority; and providing that no debt, obligation, or credit of the Commonwealth shall be incurred in the exercise of any powers granted by this act," providing for short-term loans by the authority to finance necessary working capital requirements for nonprofit institutions of higher education.

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

Section 1. The title and section 2 of the act of December 6, 1967 (P.L.678, No.318), known as The Pennsylvania Higher Educational Facilities Authority Act of 1967, are amended to read:

AN ACT

To promote the education and welfare of the people of the Commonwealth of Pennsylvania; to provide educational facilities at nonprofit institutions of higher education in the Commonwealth of Pennsylvania; *to provide short-term loans for working capital*; and creating the Pennsylvania Higher Educational Facilities Authority as a body corporate and politic with power to acquire, construct, improve, equip, furnish, operate, lease, and dispose of projects *and provide short-term loans*; authorizing and regulating the issuance of notes and bonds and the payment thereof by said authority; and providing that no debt, obligation, or credit of the Commonwealth shall be incurred in the exercise of any powers granted by this act.

Section 2. Legislative Findings and Policy.—(a) The Senate and the House of Representatives hereby find that the commerce, prosperity, welfare and security of the Commonwealth require that this and future generations of youth be assured ample opportunity to develop their intellectual capacities and that this opportunity is and will continue to be jeopardized unless the institutions of higher education in this Commonwealth are encouraged and assisted in their efforts to accommodate rapidly mounting numbers of youth who desire and require higher education. The Senate and the House of Representatives further find that all institutions of higher education in this Commonwealth are an essential and integral part of the total educational resources and effort required to be employed to meet the tremendous need for higher education; that a serious public emergency exists from the lack of

financial resources by such institutions with which to provide required educational facilities; and that it is necessary and proper for the Commonwealth to provide a measure of assistance and an alternative method to enable such institutions to provide educational facilities which are solely needed to accomplish the purposes of this act, all to the public benefit and good, to the extent and manner provided herein.

(b) The Senate and the House of Representatives further find that, because of seasonal fluctuations in revenues received in the form of tuitions, fees and appropriations by such institutions, it is often necessary for such institutions to obtain short-term loans at considerable interest expense to provide necessary working capital; that the availability of short-term revenue anticipation loans financed under this act for such purposes would reduce the interest expense of such institutions, thereby permitting such institutions to better serve the interests of the Commonwealth in promoting commerce, prosperity, security and general welfare; and that it is, therefore, necessary and proper for the Commonwealth to assist such institutions in obtaining short-term loans to fund their working capital requirements.

Section 2. Section 3(5) and (9) of the act, (9) added March 23, 1984 (P.L.145, No.27), are amended and clauses are added to read:

Section 3. Definitions.—As used in this act:

* * *

(5) “Bonds” mean and include the notes (*other than revenue anticipation notes*), bonds, and other evidences of indebtedness or obligations, which the authority is authorized to issue pursuant to this act;

* * *

(9) “Financing” or “to finance” means and includes the lending or providing of funds to a college for payment of the cost of a project[.];

(10) “*Working capital*” means and includes, but shall not be limited to, funds for supplies, materials, services, salaries, pensions and any other proper operating expenses;

(11) “*Revenue anticipation notes*” mean the revenue anticipation notes, and other evidence of indebtedness or obligations, which the authority is authorized to issue pursuant to this act for the purpose of providing short-term loans to colleges to fund their working capital requirements.

Section 3. The first paragraph and clause (14) of the second paragraph of section 5 of the act, amended March 23, 1984 (P.L.145, No.27), are amended and the second paragraph is amended by adding clauses to read:

Section 5. Purposes and General Powers.—The authority is created for the purpose of (i) acquiring, constructing, financing, improving, maintaining and operating any educational facility; and (ii) assisting colleges in financing on a short-term basis their working capital requirements.

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

* * *

(5.2) To make short-term loans to colleges for the purpose of funding their working capital requirements, which loans may be evidenced by, and secured as may be provided in, loan agreements or similar instruments entered into by the authority and the college or colleges. Loans may be secured by a pledge of or security interest in revenues receivable by the participating college or colleges during the term of the loan and by such additional security as the authority deems necessary. For the purpose of this subsection, the term "revenues receivable" shall mean all revenues reasonably estimated to be receivable by a college during the term of the loan and shall include, without limitation, to the extent not previously received, funds appropriated for the use of the college by the Commonwealth or the Federal Government or any agency thereof, revenues estimated to be receivable under the college's current schedules of tuitions and fees and all other revenues reasonably committed to the use of the college: Provided, That such term shall not include funds receivable subject to restrictions as to use and which may not be applied to or pledged for the repayment of such loans. All provisions contained in a loan agreement or similar instrument relating to the security or protection of the authority shall be a part of the contract with the holders of the revenue anticipation notes of the authority issued with respect to such loans and all colleges are hereby authorized to enter into agreements or instruments containing such provisions, anything in the charters of such colleges or in any other law to the contrary notwithstanding;

* * *

(9.1) To borrow money for the purpose of providing short-term loans to colleges to fund their working capital requirements and paying the expenses incident to the provision of such loans, to make and issue negotiable revenue anticipation notes of the authority, and to secure the payment of such revenue anticipation notes, or any part thereof, by pledge or assignment of the income and revenues receivable by the authority under loan agreements or similar instruments entered into by the authority and the college or colleges, and to make such agreements with the purchasers or holders of such revenue anticipation notes or with others in connection with any such revenue anticipation notes, whether issued or to be issued as the authority shall deem advisable, and in general to provide for the security of such revenue anticipation notes and the rights of the holders thereof;

* * *

(14) Notwithstanding any other provisions contained in this act, to combine for financing purposes, with the consent of all colleges involved, the project or the projects and some or all future projects of any two or more colleges, and to provide reserves, out of lease rentals or other funds made available for the purpose, for debt service, maintenance, repairs and replacements *and to combine, with the consent of all colleges involved, separately secured financings of working capital of two or more colleges;*

* * *

Section 4. Section 6 of the act, amended October 16, 1969 (P.L.257, No.104) and March 23, 1984 (P.L.145, No.27), is amended to read:

Section 6. Purposes and Powers; Bonds *and Revenue Anticipation Notes*.—(a) (1) The bonds of the authority hereinabove referred to and authorized to be issued *to pay the cost of a project under section 5(9) hereof*, shall be authorized by resolution of the board thereof or by the terms of a trust indenture authorized by such board, and shall be of such series, shall bear such date or dates, shall mature at such time or times, not exceeding forty years from their respective dates, shall bear interest at such rate or rates, shall be in such denominations, shall be in such form, either coupon or fully registered without coupons, shall carry such registration, exchangeability and interchangeability privileges, shall be payable in such medium of payment and at such place or places, shall be subject to such terms of redemption, not exceeding one hundred five percent of the principal amount thereof and shall be entitled to such priorities in the revenues, rentals or receipts of the authority as such trust, indenture, resolution or resolutions may provide. The bonds shall be signed by such officers, either manually or by facsimile as the authority shall determine, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of the treasurer of the authority, all as may be prescribed in such resolution or resolutions. Any such bonds may be issued and delivered, notwithstanding that one or more of the officers signing such bonds or the treasurer whose facsimile signature shall be upon the coupons or any thereof, shall have ceased to be such officer or officers at the time when such bonds actually shall be delivered. Said bonds may be sold at public or private sale for such price or prices as the authority shall determine, with the approval of the college for whose use the project is being constructed. The net interest cost to maturity of the money received for any issue of bonds, whether sold at public or private sale, shall not exceed six percent per annum, except that for a period of one year following the effective date of this act, the net interest may exceed six percent per annum but shall not exceed seven percent per annum. The interest on bonds issued with an interest rate of between six and seven percent shall be paid during the term for which the bonds were issued.

(2) For the purposes of this section, net interest cost shall be determined by ascertaining the total amount of interest payable with respect to the bonds, computed from the date of the bonds to the stated maturity dates thereof, plus the amount of any discount from the principal amount of the bonds or less the amount of any premium in excess of the principal amount of the bonds. Pending the preparation of the definitive bonds, interim receipts may be issued to the purchaser or purchasers of such bonds, and may contain such terms and conditions as the authority may determine.

(3) *The revenue anticipation notes of the authority authorized to be issued to fund the working capital requirements of colleges under section 5(9.1) shall be authorized by resolution of the board of the authority or by the terms of a trust indenture authorized by such board, and shall be of such series, shall bear such date or dates, shall mature at such time or times, but not more than thirteen months from the date on which they were issued, shall bear interest at such rate or rates, payable at maturity or at such other specified times, shall be in such denominations, shall be in such form, shall carry*

such registration, exchangeability and interchangeability privileges, shall be payable in such medium of payment and at such place or places, shall be subject to such terms of redemption, with or without premium and be entitled to such priorities in the revenues or receipts of the authority as such resolution or indenture may provide. The revenue anticipation notes shall be signed by such officers, either manually or by facsimile as the authority shall determine, all as may be prescribed in such resolution or indenture. The revenue anticipation notes may be issued and delivered, notwithstanding that one or more of the officers signing such revenue anticipation notes shall have ceased to be an officer or officers at the time when such revenue anticipation notes actually shall be delivered. The revenue anticipation notes may be sold at public or private sale for such price or prices as the authority shall determine.

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

(c) Any trust indenture, resolution or resolutions authorizing any bonds *or revenue anticipation notes* may contain provisions which shall be part of the contract with the holders thereof as to (i) pledging all or any of the revenues, rentals or receipts and contract rights of the authority from such projects or properties, as the college or colleges owning, using or leasing the same may approve *or pledging revenues receivable by the authority under loan agreements or similar instruments entered into by the authority and a college*; (ii) the acquisition, construction, financing, improvement, operation, extension, enlargement, maintenance and repair, of any project or projects, and the duties of the authority with reference thereto; (iii) the terms and provisions of the bonds *or revenue anticipation notes*; (iv) limitations on the purposes to which the proceeds of the bonds *or revenue anticipation notes*, then or thereafter to be issued, under such indenture or resolution, or of any loan or grant by the United States may be applied; (v) the rate of rentals and other charges for use of any educational facility of, or for the services rendered by the authority, including limitations upon the power of the authority to modify any leases or other agreements, pursuant to which any

rentals or other charges are payable; (vi) the setting aside of reserves or sinking funds and the regulation and disposition thereof, provided that any income received from the investment of such reserves or sinking funds shall be applied in reduction of the rentals or other charges payable by the college for whose project *or working capital requirements [the same] such reserves or sinking fund* are created; (vii) limitations on the issuance of additional bonds *or revenue anticipation notes*; (viii) the terms and provisions of any deed of trust or indenture securing the bonds *or revenue anticipation notes*, or under which the same may be issued; and (ix) any other or additional agreements with the holders of the bonds *or revenue anticipation notes*.

(d) (1) The authority may enter into any deeds of trust, indentures or other agreements with any bank or trust company, or other person or persons in the United States having power to enter into the same, including any Federal or other governmental agency, as security for such bonds *or revenue anticipation notes*, and may assign and pledge all or any of the revenues, rentals, receipts, and contract rights of the authority thereunder. Such deed of trust, indenture or other agreement may contain such provisions as may be customary in such instruments, or as the authority may authorize, including (but without limitation) provisions as to (i) the acquisition, construction, financing, improvement, operation, maintenance, and repair of any project or projects *or the provision of working capital requirements for colleges*, and the duties of the authority with reference thereto; (ii) the application of funds and the safeguarding of funds on hand or on deposit; (iii) the rights and remedies of said trustee and the holders of the bonds *or revenue anticipation notes* (which may include restrictions upon the individual right of action of such bondholders *or noteholders*); and (iv) the terms and provisions of the bonds *or revenue anticipation notes*, or the resolutions authorizing the issuance of the same: Provided further, That nothing in this act shall prevent the authority from obtaining temporary financing where necessary or desirable for any project by issuance of negotiable notes or other obligations, the maturity of which shall not exceed five years from the date of issue, and which shall be paid, as to both principal and interest, from proceeds of sale of bonds of the authority, in anticipation of which [said] *such* notes or obligations were issued.

(2) Said bonds *and revenue anticipation notes* shall have all the qualities of negotiable instruments under the law merchant, and the negotiable instruments law of the Commonwealth of Pennsylvania.

Section 5. Sections 7, 8 and 11 of the act are amended to read:

Section 7. Refunding Bonds *and Revenue Anticipation Notes*.—The authority is hereby authorized to provide, by resolution of the board, for the issuance of refunding bonds for the purpose of refunding any bonds *or revenue anticipation notes* of the authority issued under the provisions of this act and then outstanding, either by voluntary exchange with the holders of such outstanding bonds *or revenue anticipation notes* or to provide funds to redeem and retire such outstanding bonds *or revenue anticipation notes*, with accrued interest, and any premium payable thereon at maturity or at any call date. The issuance of such refunding bonds *or revenue anticipation*

notes, the maturities and other details thereof, the rights of the holders thereof, and the duties of the authority in respect to the same, shall be governed by the foregoing provisions of this act in so far as the same may be applicable. Refunding bonds *or revenue anticipation notes* may be issued by the authority to refund bonds *or revenue anticipation notes* originally issued or to refund bonds *or revenue anticipation notes* of the authority previously issued for refunding purposes.

Section 8. Remedies of Bondholders *and Noteholders*.—(a) The rights and the remedies herein conferred upon, or granted to the **[bondholders] holders of bonds or revenue anticipation notes**, shall be in addition to, and not in limitation of, any rights and remedies lawfully granted to such **[bondholders] holders**, by the resolution or resolutions providing for the issuance of bonds *or revenue anticipation notes*, or by any deed of trust, indenture or other agreement under which the same shall be issued. In the event that the authority shall default in the payment of principal of, or interest on, any of the bonds *or revenue anticipation notes* after said principal or interest shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the authority shall fail or refuse to comply with the provisions of this act, or shall default in any agreement made with the holders of the bonds *or revenue anticipation notes*, the holders of twenty-five percent in aggregate principal amount of the bonds *or revenue anticipation notes* then outstanding, by instrument or instruments filed in the office of the recorder of deeds of the county, and proved or acknowledged in the same manner as a deed to be recorded may (except as such right may be limited under the provisions of any deed of trust, indenture or other agreement as aforesaid), appoint a trustee to represent the bondholders *or noteholders* for the purposes herein provided. Such trustee and any trustee under any deed of trust, indenture or other agreement may, and upon written request of the holders of twenty-five percent (or such other percentage as may be specified in any deed of trust, indenture or other agreement aforesaid) in principal amount of the bonds *or revenue anticipation notes* then outstanding, shall, in his or its own name:

(1) By mandamus or other suit, action or proceeding at law or in equity, enforce, all rights of the bondholders *or noteholders*, including the right to require the authority to collect rates, rentals, charges and other pledged assets adequate to carry out any agreements as to, or pledge of the revenues, rentals, receipts and contract rights of, the authority, and to require the authority to carry out any other agreements with or for the benefit of the bondholders *or noteholders*, and to perform its and their duties under this act;

(2) Bring suit upon the bonds *or revenue anticipation notes*;

(3) By action or suit in equity, require the authority to account as if it were the trustee of an express trust for the bondholders *or noteholders*;

(4) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders *or noteholders*;

(5) By notice in writing to the authority, declare all bonds *or revenue anticipation notes* due and payable, and if all defaults shall be made good,

then with the consent of the holders of twenty-five percent (or such other percentage as may be specified in any deed of trust, indenture or other agreement aforesaid) of the principal amount of the bonds *or revenue anticipation notes* then outstanding, to annul such declaration and its consequences.

(b) Any trustee, whether appointed as aforesaid or acting under a deed of trust, indenture or other agreement, and whether or not all bonds *or revenue anticipation notes* have been declared due and payable, shall be entitled, as of right, to the appointment of a receiver, who (to the same extent that the authority itself could do so) may enter and take possession of the facilities of the authority or any parts thereof, the revenues, rentals, receipts or pledges from which are, or may be, applicable to, the payment of the bonds *or revenue anticipation notes* so in default, and operate and maintain the same and collect and receive all rentals and other revenues thereafter arising therefrom in the same manner as the authority might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustee, the fees, counsel fees and expenses of the trustee, and of the receiver, if any, and all costs and disbursements allowed by the court, shall be a first charge on any revenues, rentals and receipts derived from the facilities of the authority, the revenues, rentals, receipts or pledges from which are or may be applicable to the payment of the bonds *or revenue anticipation notes* so in default. Said trustee, in addition to the foregoing, shall have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of the bondholders *or noteholders* in the enforcement and protection of their rights.

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

Section 11. Issuance of Bonds *or Revenue Anticipation Notes*.—The bonds *and revenue anticipation notes* of the authority may be issued pursuant to one or more resolutions or one or more trust indentures and, as provided in such resolution or trust indenture, the moneys set aside in any fund or funds pledged for any particular bonds *or revenue anticipation notes* or series of bonds *or revenue anticipation notes* shall be held for the sole benefit of such bonds *or revenue anticipation notes*, separate and apart from the moneys pledged for any other bonds *or revenue anticipation notes* of the authority issued under any other resolution or trust indenture.

Section 6. Section 14 of the act, amended March 23, 1984 (P.L.145, No.27), is amended to read:

Section 14. Limitation of Powers.—The Commonwealth does hereby pledge to, and agree with, any person, firm or corporation or Federal or

other governmental agency subscribing to, or acquiring, the bonds to be issued by the authority for the acquisition, construction, extension, financing, improvement, or enlargement of any project, or part thereof, or for refunding purposes, *or the revenue anticipation notes to be issued by the authority for the funding of working capital requirements of colleges*, that the Commonwealth will not limit or alter the rights hereby vested in the authority, or limit or alter any provisions for the security and protection of the authority and its bondholders *and noteholders* contained in this act or as now provided by law, until all bonds *and revenue anticipation notes* at any time issued, together with the interest thereon, fully are met and discharged. The Commonwealth further does pledge to and agree with the United States and any other Federal or other governmental agency that, in the event that any such agency shall construct or contribute any funds for the acquisition, construction, extension, financing, improvement or enlargement of any project or any portion thereof, the Commonwealth will not alter or limit the rights and powers of the authority in any manner which would be inconsistent with the continued maintenance and operation of the project, or the improvement thereof, or which would be inconsistent with the due performance of any agreements between the authority and any such agency, and the authority shall continue to have and may exercise all power herein granted so long as the same shall be necessary or desirable for the carrying out of the purposes of this act and the purposes of the United States and any Federal or other governmental agency in the construction or improvement or enlargement of any project or such portion thereof.

Section 7. Section 15 of the act is amended to read:

Section 15. Exemption from Taxation.—The effectuation of the authorized purposes of the authority created under this act in all respects shall and will be for the benefit of the people of the Commonwealth, for the increase of their welfare and prosperity and for the improvement of their education and educational facilities, and since the authority will be performing essential public functions in effectuating such purposes, the authority shall be exempt from payment of any taxes or assessments upon any property acquired, held, owned, leased or used by it for such purposes, and the bonds *and revenue anticipation notes* issued by the authority, their transfer and the income therefrom (including any profits made on the sale thereof) at all times shall be free from the taxation, other than inheritance and estate taxation, within the Commonwealth of Pennsylvania.

Section 8. This act shall take effect immediately.

APPROVED—The 12th day of October, A. D. 1984.

DICK THORNBURGH