

## No. 1982-231

## AN ACT

## HB 2522

Relating to the incurrence of certain obligations in connection with the construction and operation of certain utilities owned, leased or operated by or on behalf of the City of Philadelphia.

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

Section 1. Short title.

This act shall be known and may be cited as "The City of Philadelphia Municipal Utility Inventory and Receivables Financing Act."

Section 2. Purpose of act.

It is the intention of this act to provide a comprehensive authorization for the issuance of special obligations represented by bonds which:

- (1) shall be for the purpose of financing inventory or receivables or both or any part thereof;
- (2) shall be payable from available utility revenues; and
- (3) shall be excluded in ascertaining the debt incurring capacity of the city.

The provisions of this act shall be complete and full authority, any other act, general, special or local, to the contrary notwithstanding, governing all matters, procedural or substantive, required or permitted hereby and no requirements of other acts or portions of acts need be observed.

**Section 3. Definitions.**

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

“Bond committee.” The mayor of the city, the city controller and the city solicitor, or any two of them.

“Bond resolution.” A resolution duly passed by the bond committee authorizing the issuance of bonds pursuant to the terms of this act or taking other action permitted or required hereunder.

“Bonds.” The bonds or notes of the city authorized and issued pursuant to this act on behalf of any one of its municipal utilities to finance inventory or receivables or both of its municipal utilities or to refund outstanding bonds or notes or both.

“City.” The City of Philadelphia.

“City controller.” The controller of the city including a person acting as controller under applicable law.

“City solicitor.” The solicitor for the city including a person acting as solicitor under applicable law.

“Court.” The Court of Common Pleas of Philadelphia County.

“Inventory.” Any fuel, materials or supplies acquired by the municipal utility:

- (1) used directly or indirectly by a municipal utility to provide a service to the public; and
- (2) which would be shown as a current asset on a balance sheet prepared in accordance with generally accepted accounting principles.

“Mayor.” The mayor of the city including a person acting as mayor under applicable law.

“Municipal utility.” Any city-owned, leased or operated utility facility providing services to the public for a fee including, but not limited to, water facilities, sewer facilities, gas facilities, electric facilities, steam facilities, communications facilities and solid waste facilities which the city may now or hereafter be authorized to own, lease or operate.

“Project.” Inventory or receivables or both of any one municipal utility.

“Project costs” or “cost of a project.” All costs of acquisition or funding of a project including but not limited to costs of fees and expenses of financial advisors, attorneys and other experts engaged in connection with the project, financing costs including bond discount, additional security costs including letter of credit, line of credit and insurance costs, interest on money borrowed to finance the project if capitalized, the repayment of temporary loans made in connection with the project and reimbursement for any of the foregoing costs incurred or paid prior to or after the issuance of bonds.

“Receivables.” Accounts receivable billed to customers of the municipal utility, but not yet paid, as would be shown as a current asset on a balance sheet prepared in accordance with generally accepted accounting principles.

“Revenue bonds.” Revenue bonds issued by the city pursuant to the act of October 18, 1972 (P.L.955, No.234), known as “The First Class City Revenue Bond Act.”

“Utility revenues.” All operating and nonoperating revenues of a municipal utility.

#### Section 4. Authority to issue bonds.

The city is hereby authorized to issue bonds for the purpose of financing or refunding the cost of a project or any part thereof or of two or more projects combined for any one municipal utility and to issue its refunding bonds for the purpose of refunding any outstanding bonds issued under this act, all in accordance with and subject to the provisions and limitations of this act. The bonds shall not pledge the credit or taxing power nor create any debt or charge against the tax or general revenues of the city but shall be payable solely from utility revenues designated by the city and proceeds of bonds, nor create any lien against any property of the city, other than the aforesaid utility revenues. The bonds shall be authorized by ordinance which shall set forth the maximum amount of bonds which may be outstanding at any one time for any one municipal utility and the sources of payment for the bonds. Ordinances enacted pursuant to this act shall be enacted in accordance with the procedural laws applicable to the city.

#### Section 5. Form and terms of bonds.

(a) All bonds shall contain a brief statement of the priorities in the application of utility revenues and shall contain a covenant of the city to pay when due the amounts required to pay the interest on and the principal of the bonds and a statement as to the revenues and funds available for such payment.

(b) Bonds may be issued in such denominations, in bearer or in fully registered form; shall bear such identifying designation or title; shall be dated; shall be payable at such rate or rates of interest, including supplemental, contingent or variable interest, payable on such dates; may be subject to such provisions for redemption in whole or in part or both, at such prices, at such times and places; shall be stated to mature on such date or dates, not exceeding five years from the date of enactment of the ordinance, in such amounts; shall be payable as to principal or interest or both at such places by the city or by such paying agent or fiscal agent of the city as the city appoints; may provide for the payment by the city of such tax or taxes on the bonds and may contain such other terms, provisions, statements or covenants, not inconsistent with this act, as the city may determine.

#### Section 6. Execution of bonds.

Bonds shall be executed in the same manner as shall be provided by law in the case of other city bonds.

**Section 7. Contents of authorization of bonds.**

(a) Unless otherwise provided in the ordinance, the bond committee shall determine by bond resolution the matters set forth in section 5 and either the ordinance or the bond resolution shall contain in substance:

(1) A statement of the aggregate principal amount of bonds to be outstanding at any time under the bond resolution.

(2) A statement of the priority or priorities in the application of utility revenues and a statement as to the revenues and funds available for such payment.

(3) A covenant with the obligees of the bonds to pay on the respective due dates the amounts required to pay the interest on and principal of the bonds as specified in such bonds.

(4) A covenant that the principal amount of bonds outstanding for the municipal utility will not exceed the aggregate of project costs on the date of issuance of the bonds.

(5) A finding based on the report of the chief fiscal officer of the municipal utility required by section 8 that utility revenues will be sufficient to pay the principal of and interest on the bonds.

(6) The determination of the form, terms and provisions of the bonds permitted by section 5 and of the method of sale, the terms upon which or the prices for which the bonds are to be sold or exchanged including, if desired, competitive bidding specifications.

(7) Provisions for a sinking fund complying with section 9.

(8) Provisions, if any, for granting a security interest in utility revenues which security interest shall be subject to any prior lien thereon of revenue bonds, which provisions may incorporate by reference the procedures which would otherwise be applicable if the city were a private corporation for profit.

(9) The name of a fiscal agent who shall authenticate the bonds and a specification of the terms and conditions upon which the fiscal agent is authorized to authenticate the bonds.

(b) Subject to currently applicable constitutional provisions prohibiting the delegation to any special commission, private corporation or association of any power to make, supervise or interfere with any improvement, money, property or effect of the city or perform any municipal function whatsoever and subject to other applicable provisions of this act, the ordinance or bond resolution may also contain:

(1) Covenants with the obligees of the bonds or other provisions governing the issuance of additional bonds; the rights and remedies of obligees upon default and such other provisions as are deemed necessary or desirable in the interest of or for the protection of the city or of such obligees.

(2) Agreements with any bank, bank and trust company or trust company appointing the same as paying agent or fiscal agent and containing appropriate provisions governing the deposit, custody and payment of moneys, the maintenance of accounts and records, the authentication, registration, transfer and exchange of bonds, the

payment of principal of and interest on the bonds, the cremation or other disposal of cancelled bonds, the rights, duties, privileges and immunities of the paying agent or fiscal agent and such other matters as are customary or appropriate.

(3) Agreements with any bank, insurance company or other appropriate entity providing additional credit or payment sources for the bonds including, without limitation, letters of credit, lines of credit and insurance. Such agreement may provide for payment or acquisition of the bonds if the city does not pay the bonds when due and may provide for repayment to the bank or other institution for a period of up to five years from the date of such payment or acquisition.

(c) The covenants, terms and provisions made under subsections (a) and (b) for the benefit of the obligees of the bonds shall constitute contractual obligations of the city subject to modification (with such limitations as may be specified in the ordinance or bond resolution) by agreement with a majority in interest of the holders or registered owners of the bonds affected or such larger portion thereof as may be provided in the ordinance or bond resolution.

#### Section 8. Financial report and legal opinion.

Prior to the issuance of any bonds, there shall have been filed with the bond committee by the chief fiscal officer of the municipal utility:

(1) A financial report by such chief fiscal officer supported by appropriate schedules and summaries, containing a statement:

(i) identifying the sources of funds from which the bonds are to be paid; and

(ii) that, on the basis of actual, if appropriate and estimated future annual financial operations of the municipal utility, in the opinion of the chief fiscal officer, utility revenues of the municipal utility will be available to pay the principal of and interest on all bonds, as the same shall become due and payable for the particular municipal utility. Where a bank or other institution has entered into an agreement with the city to pay bonds or to acquire the bonds from the holders thereof if the city does not pay the bonds when due and the agreement requires the city to repay the bank or institution over a fixed period of time, such period of time may be included in calculating utility revenues available to pay the bonds. The statements and opinion of the chief fiscal officer contained in such financial report with respect to expenses and revenues may be based upon statements or data contained in, and appropriate schedules and summaries may be incorporated by reference to, certificate of any registered engineer, registered architect, certified public accountant or other qualified expert who shall have been engaged to compile the relevant data, in which case each such financial report or certificate shall be attached to the report of the chief fiscal officer.

(2) An opinion of the city solicitor dated at any time after the enactment of the ordinance or the passage of the bond resolution and prior to the issuance of any bonds to the effect that, under the ordi-

nance and the bond resolution, the holders or registered owners of the bonds to be issued will have no claim upon the taxing power or general revenues of the city nor any lien upon any of the property of the city except for utility revenues.

**Section 9. Sinking fund investments.**

(a) The ordinance or bond resolution shall provide for the establishment and maintenance of a sinking fund for the payment of interest on and the principal of the bonds at stated maturity or upon mandatory or optional redemption. Such sinking fund may be an aggregate fund for some or all series of bonds in which case each series shall participate proportionately therein or a separate sinking fund may be established for any particular series.

(b) Each such sinking fund and any other funds or accounts established by the ordinance or bond resolution shall be managed in accordance with the covenants of the city contained in the ordinance or bond resolution and unless stricter requirements are imposed by the ordinance or bond resolution, the moneys therein to the extent not currently required shall be invested from time to time in such securities as may at the time of investment be authorized by law for investment of moneys of the Commonwealth or any of its instrumentalities or shall be deposited in interest-bearing deposits with any bank, bank and trust company or trust company or in shares of building and loan associations or Federal savings and loan associations. All deposits, including interest-bearing deposits, of moneys in the sinking or other funds, to the extent that the same are not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or other Federally authorized corporation or agency, shall be secured either as required by law requiring depositories of the city to give bond or as authorized by law for the securing of public money, or in accordance with such stricter requirements as the ordinance or bond resolution shall provide. Each bank, bank and trust company, trust company and building and loan association is hereby authorized to so secure such deposits.

(c) Interest and profits received from investments and deposits of moneys in the sinking fund and other funds shall be added to such fund and may be applied in reduction of or to complete required deposits. Excess moneys in the sinking fund, including moneys for the payment of interest, principal or premiums of bonds unclaimed after the due date of two years and excess moneys in other funds shall be repaid to the municipal utility for its general purposes or applied as may be provided in the ordinance or bond resolution but such repayments of unclaimed moneys shall not discharge such claim which shall continue subject to applicable law.

**Section 10. Sale or exchange of bonds.**

Bonds may be sold by the city at public or private sale or may be exchanged upon such terms not inconsistent with this act and at such prices as the city may determine in accordance with section 7.

**Section 11. Filing of transcript of proceedings.**

Prior to the delivery of bonds, the city shall file with the court a transcript of the proceedings authorizing their issuance consisting of a certified copy of the ordinance and bond resolution or resolutions, if any, an executed or certified copy of the report of the chief fiscal officer of the municipal utility required by section 8 and an executed copy of the opinion of the city solicitor required by section 8.

**Section 12. Approval by the court.**

(a) No bonds shall be issued under this act until the transcript of the proceedings authorizing their issuance shall have been approved by the court either under this section or under section 13.

(b) Prior to the filing of the transcript with the court under section 11, notice of intention to file the same shall be published once a week for two successive weeks in a newspaper of general circulation and also in the legal journal, if any, published in the city. Publication shall be completed at least two days prior to the filing of the transcript and proof of such publication shall be attached to the transcript when filed.

(c) If no petition for a declaratory order or complaint under section 13 is filed with the court with respect to a transcript within 20 days after the date of the first publication of notice under subsection (b), or within ten days after the filing of the transcript, whichever is later, the office of clerk of the court shall, on the praecipe of the city, file as of course a final order approving the transcript. Such order shall have the effect of a finding of irrevocable and conclusive waiver of any claim or issue which might have been raised under section 13 and shall be deemed a final order under a statute relating to the authorization of public debt within the meaning of Rule 903(c)(3) of the Pennsylvania Rules of Appellate Procedure.

(d) If any bonds shall be sold, or executed and delivered, in violation of subsection (a), such bonds shall be invalid in the hands of or for the security of the holder of such bonds, except to the extent provided in this subsection. If the bonds shall be held by a bona fide purchaser (other than an initial purchaser or member of an underwriting or selling group) for value without actual notice of the violation and if such bonds shall contain a recital that such prior approval has been obtained, then such bonds shall be valid and enforceable in accordance with their terms to the extent necessary to validate and keep valid such bonds, but not for the purpose of reducing the liability of any person under this section. The city shall be entitled to recover all interest and principal or other amounts payable thereon or thereunder from the initial purchasers and the persons, including the officers of the city, responsible for making the unapproved or unauthorized delivery. Notwithstanding the invalidity of the instruments as to them, the initial purchasers and such other persons shall be entitled to credit, in any action determining such invalidity or for the recovery provided by the preceding sentence, for the amount of:

- (1) any proceeds of the sale of the instruments still held unexpended by the city; and

(2) the cost or fair market value, whichever is the lesser, of any project or part thereof or interest therein acquired by the city by an expenditure of a portion or all of the proceeds of such bonds.

(e) When no petition for a declaratory order or complaint has been filed within the period specified in subsection (c), or when after a petition for a declaratory order or complaint has been filed the transcript shall have been approved finally by the court, the validity of the proceedings, the right of the city lawfully to issue its bonds pursuant to such proceedings and the validity and due enforceability of the bonds in accordance with their terms shall not thereafter be inquired into judicially, in equity, at law, or by civil or criminal proceedings, or otherwise, either directly or collaterally. The effect of the approval by the court or by a court on appeal, shall be to ratify, validate and confirm such proceedings absolutely, including the lawful nature of the project notwithstanding the defect or error in such proceedings, except as provided in subsection (f), and any limit imposed by this act on the principal amount of bonds which may be issued shall be deemed increased to the extent necessary to validate such debt or other obligation.

(f) Nothing contained in subsection (e) shall:

(1) free an initial purchaser of bonds from liability to the city for the payment of the consideration agreed in the contract of sale, or make all such bonds valid and enforceable in the hands of an initial purchaser unless the city shall have received a substantial consideration for the series as a whole; or

(2) relieve any person participating in such proceedings from liability for knowingly participating in an ultra vires act of the city or from any civil or criminal liability for false statements in any certificates filed or delivered in such proceedings.

### Section 13. Complaints and petitions for declaratory orders.

(a) Where proceedings for the incurring of debt or other obligations represented by bonds have been taken by the city hereunder, the city or any taxpayer of the city, or other interested party, may file with the court a petition for a declaratory order asserting the validity or a complaint asserting the invalidity of such proceedings, or any part thereof. Any such complaint asserting the invalidity of any such proceedings or part thereof, may be filed within the period specified by section 12(c) and not thereafter. If a petition for a declaratory order shall be filed in respect of any transcript, the court shall not act thereon within the period specified by section 12(c) and if a complaint is filed during such period with respect to such transcript, the court shall not approve the transcript during the pendency of the complaint before the court.

(b) The jurisdiction of the court to hear and determine all procedural and substantive matters arising from the proceedings of the city taken pursuant to this act, including without limitation, the regularity of the proceedings, the validity of the bonds and the legality of the purpose for which such obligations are to be issued, shall be exclusive. ~~If the city shall file a petition for a declaratory order with the court, relating to such pro-~~



ceedings, the court may require such service by publication on taxpayers as the circumstances warrant. In all other respects the proceedings before the court shall be governed by rules or orders of the court. The court shall have the power, after appropriate proceedings in accordance with such rules or orders, to approve or disapprove the proceedings of the city under this act or to direct correction thereof. A final determination under this act by the court, or of an appellate court, in the case of appeal, shall be conclusive and binding as to all procedural and substantive matters which were or could have been presented to the court hereunder. A determination in favor of the city under this section shall have the effect provided in section 12(e).

Section 14. Lost, stolen, destroyed or mutilated bonds.

If any bond issued under this act shall become mutilated or be destroyed, stolen or lost, the city shall execute and any sinking fund depository, fiscal agent or trustee for bondholders shall, if required, authenticate and deliver a new bond of like series and principal as the bond so mutilated, destroyed, stolen or lost, upon surrender and cancellation of such mutilated bond, if any, or in lieu of and in substitution for the bond destroyed, stolen or lost, upon filing with the fiscal agent or trustee, evidence satisfactory to it, that such bond has been destroyed, stolen or lost and proof of ownership thereof and upon furnishing of satisfactory indemnity and complying with such other reasonable regulations as the city shall prescribe, and paying any reasonable expenses, including counsel fees, as the city or the fiscal agent or trustee may incur. Mutilated bonds, if surrendered, shall be cancelled.

Section 15. Negotiable qualities of bonds.

Bonds issued pursuant to this act shall be negotiable instruments notwithstanding any other provisions of law.

Section 16. Bonds excluded from debt of the city.

(a) It is the intention of this act to provide a comprehensive authorization for the issuance of special obligations of the city which, to the extent any such obligation constitutes debt of the city, shall be self-supporting revenue debt of the city the proceeds of which may be expended for the payment or reimbursement of the cost of the purchase or construction of any municipal utility or part of such municipal utility, or facility therefor, which debt shall be deducted from the debt of the city for the purpose of ascertaining the debt-incurring capacity of the city for the purposes of section 12 of Article IX of the Constitution of Pennsylvania.

(b) The determination by ordinance or bond resolution as set forth in section 7(a)(5) shall constitute a determination that the obligation of any bonds with respect to which the determination is made which constitute debt of the city shall be deducted from the debt of the city for the purposes of ascertaining the debt-incurring capacity of the city under the Constitution of Pennsylvania.

**Section 17. Exemption of bonds from taxation in Pennsylvania.**

The Commonwealth hereby pledges to and agrees with any person, firm or corporation or Federal agency subscribing to or acquiring any bonds issued by the city pursuant to the provisions of this act, that such bonds, their transfer and the income therefrom including any gains made on the sale thereof (other than underwriting profits in a distribution thereof) shall at all times be free from taxation within and by the Commonwealth of Pennsylvania, but this exemption shall not extend to underwriting profits or to gift, succession or inheritance taxes or any other taxes not levied directly on the bonds, the receipt of the income therefrom, or the realization of gains on the sale thereof.

**Section 18. Remedies of bondholders.**

(a) If the city fails or neglects to pay or cause to be paid the principal of or the interest on any bond as the same shall become due, whether at the stated maturity or upon call for prior redemption, the holder thereof shall, subject to subsection (b) of this section, and to any reasonable limitations upon individual rights of action properly provided in the ordinance or bond resolution, have the right to recover the amount due in an action in a court of competent jurisdiction, but the judgment shall be limited to payment out of the revenues of the municipal utility for whose benefit the bonds were issued.

(b) Notwithstanding any provision in the bonds, the ordinance, or in the bond resolution, if the city shall default in the payment of the principal of or the interest on any series of bonds after the same shall become due, whether at the stated maturity or upon call for prior redemption, and such default shall continue for 30 days, or if the city shall fail to comply with any provision of the bonds, the ordinance or in any bond resolution, the holders of 25% in aggregate principal amount of the bonds of such series then outstanding, by an instrument or instruments filed in the department of records in the city signed and acknowledged in the same manner as a deed to be recorded, may appoint a trustee, who may be the sinking fund depository, to represent the holders of all such bonds and such representation shall be exclusive for the purposes herein provided. Such trustee may, and upon written request of the holders of 25% in principal amount of such bonds then outstanding and upon being furnished with indemnity satisfactory to it, shall, in its own name, take one or more of the actions set forth below and the taking of such actions shall preclude similar action whether previously or subsequently initiated by individual holders of bonds:

(1) By mandamus or other action or proceeding at law or in equity enforce all rights of the holders of the bonds.

(2) Bring an action on the bonds without the necessity for producing the bonds and with same effect as a suit by any holder.

(3) Bring an action in equity to require the city to account as if it were the trustee of an express trust for the holders of such bonds for any revenues received or enjoin any acts or things which may be unlawful or in violation of the rights of the holders of any bonds or both.

(4) After 30 days prior written notice to the city, and subject to any limitations in the ordinance or bond resolution, declare the unpaid principal of all bonds to be, and it shall thereby become forthwith, due and payable with interest at the rates stated in the bonds until final payment and, if all defaults shall be made good, then to annul such declaration and its consequences.

(c) The court in cases of extreme hardship may provide for the payment of sums levied in five or less annual installments with interest at a rate sufficient to cover the interest accruing on the bonds.

Section 19. Costs of proceedings.

In any action or proceeding by or on behalf of the holders of defaulted bonds of the city brought under this act, the fees and expenses of a trustee, including reasonable counsel fees, shall constitute taxable costs, and all such costs and disbursements allowed by the court shall be deemed additional principal due on the bonds, and shall be paid in full from any recovery prior to any distribution to the holders of the bonds.

Section 20. Distribution of moneys realized for bondholders.

Moneys or funds collected for the holders of defaulted bonds entitled to share equally and ratably therein shall, after the payment of costs and fees as provided in section 19, be applied by the trustee, unless the terms of the bonds provide otherwise, as follows:

(1) Unless the principal of all of the bonds represented shall have become or have been declared due and payable, to the payment to the persons entitled thereto of the unpaid principal and interest on any bonds which shall have become due, whether at stated maturity dates or by call for redemption, in the order of their respective due dates, and if the amount available shall not be sufficient to pay in full all bonds due on any date, then to the payment ratably, according to the amounts of principal and interest due on such dates, to the persons entitled thereto without any discrimination or preference.

(2) If the principal of all of the bonds entitled to share equally in such moneys shall have become or shall have been declared due and payable, to the payment of the principal and interest then due and unpaid upon the bonds without preference or priority of principal over interest or interest over principal, or of any installment of interest over any other installment of interest, or of any bond over any other bond ratably according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the bonds.

(3) If more than one series is involved and the principal of all bonds of one or more series has become or has been declared due and payable, and if one or more others has not, the funds available shall be apportioned to each series then outstanding less, as to each series, any amounts held earmarked for such series and distribution to the holders of the bonds of each series shall be made according to whichever of paragraphs (1) and (2) may be applicable.

**Section 21. Repealer.**

All acts and parts of acts inconsistent with this act are hereby repealed to the extent of such inconsistency but nothing in this act shall be deemed or construed to enlarge or curtail the purposes for which the city may now or hereafter be authorized to borrow money nor prevent the financing of projects under other applicable statutes.

**Section 22. Effective date.**

This act shall take effect immediately.

APPROVED—The 7th day of December, A. D. 1982.

DICK THORNBURGH

**Publication of Notice of Application for Local Legislation.** Notice of the application for local legislation relating to Act 1982-231 was published in the Philadelphia Inquirer, the Philadelphia Daily News and the Legal Intelligencer. See the Appendix to the Legislative Journal of the House of Representatives for the 1982 legislative session for proofs of publication of the notice.