

## No. 1982-330

## AN ACT

## HB 1578

Amending the act of August 7, 1963 (P.L.549, No.290), entitled, as amended, "An act creating the Pennsylvania Higher Education Assistance Agency; defining its powers and duties; conferring powers and imposing duties on the Governor, President Pro Tempore of the Senate, Speaker of the House of Representatives, Superintendent of Public Instruction and the Department of Auditor General; and making appropriations," authorizing the agency to issue bonds and other notes of indebtedness for the purpose of making loans to graduate and undergraduate students and parents and to enable lenders and postsecondary institutions to make such loans available to students and parents; further providing for assistance grants and clarifying student loan repayment requirements of State employees.

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

Section 1. Section 2, act of August 7, 1963 (P.L.549, No.290), referred to as the Pennsylvania Higher Education Assistance Agency Act, amended January 18, 1968 (1967 P.L.952, No.424), is amended to read:

Section 2. Purpose.—The purpose of such agency shall be to improve the higher educational opportunities of persons who are residents of this State and who are attending approved institutions of higher education, in this State or elsewhere, by **[guaranteeing loans made to such persons to assist]** *assisting* them in meeting their expenses of higher education in accordance with the provisions of this act *and by enabling the agency, lenders and postsecondary institutions to make loans available to students and parents for postsecondary education purposes.*

Section 2. Section 4 of the act, amended May 8, 1965 (P.L.53, No.41), January 18, 1968 (1967 P.L.952, No.424), December 30, 1970 (P.L.947, No.297), December 30, 1974 (P.L.1111, No.357), December 21, 1977 (P.L.338, No.99), July 12, 1981 (P.L.264, No.89) and November 25, 1981 (P.L.417, No.130), is amended to read:

Section 4. Powers and Duties.—In furtherance of the purposes set forth in this act, the board of directors shall have the following powers:

(1) *To make, guarantee, undertake commitments to make or acquire and participate with lending or postsecondary institutions in the making of loans, service or otherwise provide* loans of money upon such terms and conditions as the board may prescribe within the limitations contained herein *or applicable Federal law*, at such rates of interest as are determined by the agency, *to lenders, postsecondary institutions and* to persons who are residents of this State and who plan to attend or are attending any approved institution of higher education eligible under this act *or applicable Federal law*, in this State or elsewhere to assist them in meeting their expenses of higher education. No such person shall receive

any loan *or loan guarantee* in excess of [one thousand five hundred dollars (\$1500) for any academic year and no such person shall receive a total loan guarantee of more than seventy-five hundred dollars (\$7500) except if such loans are] *annual and maximum limits as established by the board of directors or in compliance with limits established for loans funded*, guaranteed or reinsured under Federal laws. Such *loans or loan guarantees* shall become due and payable at the direction of the board of directors [and the board of directors may extend the repayment period not to exceed fifteen years from the date of execution of the note or other written evidence of the loan or as allowed under Federal law when the loan is guaranteed or reinsured under Federal laws].

(1.1) As a public corporation and body politic subject to examination by the Auditor General of the Commonwealth, the agency shall be deemed an "eligible lender" as defined in Part B of Title IV of the Federal Higher Education Act of 1965 and *in Part C of the Health Professions Educational Assistance Act of 1976 and*, pursuant to the provisions of [the act] *those acts and any subsequent amendments thereto or other applicable Federal programs*, be entitled to *exercise* all the authority, rights and privileges of an "eligible lender." Such authority, rights and privileges shall include but not be limited to the following:

(i) To do whatever is necessary to enable students [with whom the agency makes an insured loan] *who are parties to loans made, funded or guaranteed under this act* to qualify for Federal interest subsidy [and], special allowance, *loan forgiveness or other applicable benefits*.

(ii) To charge *and collect* premiums for insurance on loans *and other appropriate charges and pay such insurance premiums or a portion thereof and other charges as are appropriate or required by applicable Federal statutes or agreements*.

(iii) To enter into contracts with schools, lenders, *individuals*, corporations, the Student Loan Marketing Association, other agencies of the Commonwealth, other states and the Federal Government to *make*, service [student loans], *invest in, purchase, make commitments to purchase, take assignments of or administer loans made or insured under this act, the Health Professions Educational Assistance Act of 1976, or other programs approved by the board of directors and to provide for loan forgiveness, loan consolidation, loan referral service and graduated repayment. Loans to lenders or postsecondary institutions made under this clause may be made under terms and conditions requiring that the funds so loaned be used for the making of loans to categories of students as defined and established by the board.* Any such contract of the agency to service student loans shall not be subject to the provisions of the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law. For purposes of this clause, contract shall include schedules or exhibits relating to pricing or schedules relating to equipment, time charges, service charges or other charges pertinent to an agency contract to service student loans. Any citizen of the Commonwealth of Pennsylvania who desires to examine, inspect or copy any such contract shall apply to the

Attorney General. Upon receipt of any such application, the Attorney General shall cause a review of the contract to determine if the disclosure of the contents of the contract could cause a loss of revenue to any Commonwealth fund or to the agency. If the Attorney General determines that it is unlikely that a loss of revenue to any Commonwealth fund or the agency could occur, the Attorney General may grant the application and order the agency to permit the citizen to examine, inspect or copy the contract. Otherwise, the Attorney General shall deny the application. The Attorney General shall also have the power to determine that portions of the contract may be examined, inspected or copied and other portions may not. The agency may adopt and enforce reasonable rules, subject to the approval of the Attorney General, governing the examination, inspection or copying of any such contracts. The Attorney General shall make a determination for any application within thirty days of receipt thereof.

(iv) To purchase stocks, securities, and *the obligations issued by the Student Loan Marketing Association, and to use its insured and other student loans as security for loans and other forms of advances from the Student Loan Marketing Association or others, including lenders and postsecondary institutions participating or investing in loans made under this act.*

(v) *To be issued certificates of loan insurance as set forth in section 732, Part C, Title IV of the Health Professions Educational Assistance Act of 1976 or other appropriate Federal legislation.*

(1.2) To guarantee loans to parents as authorized by Federal law Part B, Title IV, of the Federal Higher Education Act, as amended, and to other persons for purposes of attending postsecondary educational institutions from funds other than those appropriated by the Commonwealth and to pay such interest and costs or any parts thereof and for such period of time as may be authorized by the board of directors of the agency and on loans guaranteed for individual students and parents who otherwise would not qualify for Federal or other interest subsidy.

(1.3) *To establish annually the award of the "assistance grant" in the act of July 18, 1974 (P.L.483, No.174), known as "The Institutional Assistance Grants Act" by dividing the total amount annually appropriated to the "agency" pursuant to that act by the number of "Pennsylvania State scholarship students" certified to the "agency" pursuant to that act.*

(2) To [provide for monthly payments during this extended period] *pay costs and fees incurred by lenders and others in making loans, advancing funds representing loans issued through a line of credit advanced by the agency or the lender and performing other functions on behalf of the agency.*

(3) To take, hold [and], administer, assign, lend, encumber, mortgage, invest or otherwise dispose of, at public or private sale, on behalf of the agency and for any of its purposes, real property, personal property and moneys or any interest therein *including any mortgage or loan*

*interest owned by it or under its control or in its possession and the income therefrom either absolutely or in trust. The board may acquire property or moneys for such purpose by purchase or lease and by the acceptance of gifts, grants, bequests, devises or loans. The board may, with the approval of the Governor, borrow moneys by making and issuing notes, bonds and other evidences of indebtedness of the agency and by making and issuing refunding notes, bonds and other evidences of indebtedness, as the board may from time to time determine necessary to make and issue for the purposes of purchasing, making or guaranteeing loans to students or parents, or to lending institutions or to post-secondary institutions for the purpose of student loans, but no obligation of the agency shall be a debt of the State and it shall have no power to pledge the credit or taxing power of the State nor to make its debts payable out of any moneys except those of the corporation. All accrued and future earnings [up to a maximum of six hundred thousand dollars (\$600,000)] from funds invested by the board of directors [are hereby appropriated to the agency to guarantee the loans of moneys as provided in this act and for payment of expenses in carrying out all of the functions of the agency for the fiscal year commencing July 1, 1970. The payment of expenses in carrying out the provisions of this act shall be from funds appropriated by the General Assembly for that purpose and for the fiscal year commencing July 1, 1970 one per cent of all funds appropriated by the General Assembly for scholarships to be administered by the agency are hereby appropriated to the agency up to a maximum of three hundred ninety-four thousand dollars (\$394,000) and may be used by it for the payment of expenses of carrying out the provisions of this act; such appropriations shall be augmented by such other funds as shall become available from time to time from the Federal government, insurance premiums and charges assessed by the agency, or contributions for the same purpose.] and such other accrued and future nonappropriated funds including but not limited to those funds obtained from the Federal Government, insurance premiums, charges assessed by the agency, loan servicing revenues, and contributions for the same purpose shall be available to the agency and may be placed in depositories approved by the State Treasurer or otherwise invested by the agency under its investment options and may be utilized at the discretion of the board of directors for carrying out any of the corporate purposes of the agency either directly or through augmentation of a State appropriation. For the purpose of administration, the agency shall be subject to the following provisions of "The Administrative Code of 1929:" sections [601, 602, 603 and 604] 610, 613, 614 and 615.*

(4) To enter into contracts with *or provide funds to* approved and eligible institutions of higher education upon such terms as may be agreed upon between the board and any such institution, to provide for the administration by such institutions of any [guarantee of a] loan made, *guaranteed or serviced* by the agency including applications therefor and [repayment] *disbursement and payment* thereof, and to acquire Federal

*moneys to establish loan programs for students attending such institutions.*

(5) To establish and from time to time revise and publish a list of approved *or eligible* institutions of higher education.

(6) To adopt rules and regulations not inconsistent with law governing matters relating to its activities *including rules and regulations to assure that student applicants for admission or students enrolled are not discriminated against because such applicants and students have not or will not qualify as a recipient for aid under programs administered by the agency* and to adopt such other rules and regulations and to perform such other acts as may be necessary or appropriate to comply with applicable Federal legislation.

(7) To perform such other acts as may be necessary or appropriate to carry out effectively the objects and purposes of the agency as specified in this act.

(8) To take, hold and administer for the purpose of **[granting scholarships]** *the agency*, real property, personal property and moneys, or any interest therein, and the income therefrom, either absolutely or in trust, by the acceptance of gifts, grants, bequests, devises or loans, but no obligation of the agency shall be a debt of the **[State] Commonwealth** and it shall have no power to pledge the credit or taxing power of the **[State] Commonwealth** or to make **[their] the agency's** debts payable out of any moneys except those of the agency.

(9) To conduct investigations to determine whether applications or income tax and other data submitted to the agency contain any misrepresentations or false statements made for the purpose of cheating or defrauding. Whoever, by any false pretense, knowingly and with intent to defraud, procures, obtains, or attempts to obtain, or aids, assists, or abets, in obtaining or attempting to obtain from or through the Pennsylvania Higher Education Assistance Agency *or under this act* any moneys, scholarship awards, educational assistance grants, loans or loan guarantees shall be liable to the agency for an amount equal to three times the amount obtained.

(10) To establish an investigation unit which shall have the power and duty to:

(i) investigate alleged violations of all criminal statutes related to fraud or a breach of fiduciary obligation committed by any person who has obtained or attempted to obtain, or aids, assists, or abets in obtaining or attempting to obtain, scholarship awards, educational assistance grants, loans or loan guarantees or other moneys from the agency;

(ii) work in conjunction with the appropriate prosecuting authorities in the prosecution of cases where it is determined that evidence of criminal activity exists. In the enforcement of criminal statutes or investigations related to fraud or a breach of fiduciary obligation under this clause, the staff of the investigation unit shall have the powers of law enforcement officers; and

(iii) present to the board of directors of the agency, evidence of probable violations of criminal statutes related to fraud or a breach of fiduciary obligation and request the board to issue an order of subpoena duces tecum to obtain original documents submitted by individuals for the purpose of obtaining loans or loan guarantees or other moneys from the agency. The board of directors shall have the power to issue a subpoena duces tecum for such purposes under the hand of its chairman upon a majority vote of its membership of a finding that a probable violation of such criminal statutes has occurred.

(11) To execute by writ of execution upon wages, salaries or commissions in the hands of an employer or any other person in order to enforce money judgments for the repayment of *all* loans authorized, serviced, *insured*, made, *funded* or guaranteed under this act *or Federal law*: Provided, however, That such power of execution may not be assigned to any other person or agency nor be employed for any other purpose by the agency. Such power of execution may be exercised at the discretion of the agency, but under no circumstances may an amount in excess of ten percent of the pay of an obligor be subject to execution during any given pay period.

Section 3. Section 4.2 of the act, added November 26, 1978 (P.L.1291, No.308), is amended to read:

Section 4.2. Loans to State Employees.—Any person who has received a loan *made or* guaranteed pursuant to this act *or from funds which include State-appropriated funds provided to an institution receiving State aid* and who at anytime becomes or is an employe of the Commonwealth or any of its agencies shall be deemed to have agreed as a condition of their employment with the Commonwealth, *and shall be deemed to have consented to voluntary or involuntary withholding of their wages*, to repay such loan. Any such employe who [defaults] *has defaulted or does default* on the repayment of such loan shall [make immediate arrangements with the employing agency or loan guarantor to set up a revised loan repayment schedule with the employe either making direct payments to the lending institution, guarantor or its agent or making such payments through payroll deductions. Such employe shall thereupon be notified that if such employe thereafter defaults on the revised loan repayment schedule], *within sixty days after service of a notice of default by the agency to the employing agency, establish a loan repayment schedule which is agreed to by the agency with the salary-status employe making such payments through payroll deductions and employes other than salary-status making payment in accordance with a repayment plan approved by the agency. Under no circumstances may an amount in excess of ten per cent of the pay of such employe be required by the agency as part of a repayment schedule or plan. If such employe fails to establish a repayment schedule within the specified period of time or fails to meet the terms and conditions of the agreed-to or approved repayment schedule as authorized by this section*, such employe shall be deemed to have breached an essential condition of employment and shall

**[be dismissed from Commonwealth service] be deemed to have consented to the involuntary withholding of his wages or salary for the repayment of the loan. Under no circumstances may an amount in excess of ten per cent of the pay of such employe be withheld.**

Section 4. Section 5 of the act, amended January 18, 1968 (1967 P.L.952, No.424), is amended to read:

Section 5. Capacity of Minors.—Any person otherwise qualifying for a loan *made, guaranteed, serviced or otherwise provided for* by the agency, shall not be disqualified by reason of [his] being under the age of [twenty-one] *eighteen* years and[, for the purpose of applying for, and receiving such guarantee,] any such person shall be deemed to have full legal capacity to act and shall have all the rights, powers, privileges and obligations of a person of full age with respect thereto.

Section 5. The act is amended by adding sections to read:

**Section 5.1. Bonds, Notes and other Indebtedness.—(a) Subject to the limitations contained in this section, the board may from time to time by resolution and with the approval of the Governor, authorize issuance of negotiable bonds, notes and other evidences of indebtedness, including certificates of participation, in such amounts, bearing such interest rates and terms and maturing in such amounts and at such times as the board of directors may prescribe by resolution.**

**(a.1) The proceeds realized from the sale of notes, bonds or similar indebtedness shall be used for the purpose of purchasing, making or guaranteeing loans to students or parents, or to lending institutions or postsecondary institutions for the purpose of student loans and the cost of issuance of the indebtedness, the establishment of reserve funds from the proceeds of the indebtedness, administration of the loans purchased, made or guaranteed and other costs associated with loans purchased, made or guaranteed with funds from the proceeds of the indebtedness. The aggregate principal amount of bonds, notes and similar evidences of indebtedness of the agency shall not exceed ten per cent of the total of loans guaranteed or made by the agency.**

**(b) Except as otherwise required by the agency, the bonds, notes and other evidences of indebtedness of the agency shall be limited obligations of the agency payable out of the proceeds of loans made under this act, reserve funds created therefor by the agency, any insurance contracts pertaining thereto and other lawfully available money, subject only to any agreements with the holders of the bonds, notes or other evidences of indebtedness of the agency, pledging any particular receipts or revenues. Bonds, notes or other evidences of indebtedness issued under the provisions of this act shall not be deemed to constitute a debt of the Commonwealth or a pledge of the faith and credit of the Commonwealth. All such bonds, notes and other evidences of indebtedness shall contain on the face thereof a statement to the foregoing effect and to the effect that the agency shall be obligated to pay the same or the interest thereon only from such moneys or revenues, proceeds, reserve funds, insurance contracts and such other moneys of the agency and that neither the faith and**

*credit nor the taxing power of the Commonwealth is pledged to the payment of the principal of or the interest on such bonds, notes or other evidences of indebtedness.*

*(c) The bonds, notes and other evidences of indebtedness of the agency shall be signed by the chairman who may use a facsimile signature for this purpose. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The obligations of the agency shall bear interest at such rate or rates, be in such denominations, have such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places within or without the Commonwealth, be subject to such terms of redemption and maturity and contain such other terms as the board of directors may determine. The notes and bonds of the agency may be sold by the agency at public or private sale at such price or prices as the board of directors determines. If the chairman of the board of directors whose signature appears on any notes or bonds or coupons ceases to act in that capacity before the delivery of such notes or bonds, his signature shall be valid and sufficient for all purposes as if he had remained in office until such delivery.*

*(d) The agency may issue refunding obligations to refund any obligations then outstanding which have been issued under the provisions of this act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and for any statutory purpose of the agency.*

*(e) No director of the agency nor any person executing bonds, notes or other evidences of indebtedness of the agency shall be subject to personal liability or accountability solely by reason of his execution of such obligations or the issuance thereof.*

**Section 5.2. Agreements with Bondholders; Lien of Pledge.—**

*(a) The agency in issuing any bonds, notes or other obligations may contract with the holders thereof as to:*

*(1) Pledging revenues of the agency to secure the payment of the bonds, notes or other obligations subject to such agreements with holders of obligations of the agency as may then exist.*

*(2) Pledging assets of the agency to secure the payment of the bonds, notes or other obligations subject to such agreements with holders of obligations of the agency as may then exist.*

*(3) The setting aside of reserves or sinking funds and the regulation and disposition thereof.*

*(4) Limitations on the purpose to which the proceeds of sale of bonds, notes or other obligations may be applied and pledging such proceeds to secure the payment of the bonds, notes or other obligations or of any issue thereof.*

*(5) Limitations on the issuance and terms of additional bonds, notes or other obligations and the refunding of outstanding or other bonds, notes or other obligations.*



*(6) The procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of bonds, notes or other obligations the holders of which must consent to such amendment or abrogation and the manner in which such consent may be given.*

*(7) Vesting in a trustee or trustees such property, rights, powers and duties in trust as the board of directors may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this act and limiting or abrogating the right of the bondholders to appoint a trustee under this act or limiting the rights, powers and duties of such trustee.*

*(8) Defining the acts which shall constitute a default in the obligations and duties of the agency to the holders of the bonds, notes or other obligations and providing for the rights and remedies of the holders of the bonds, notes and other obligations in case of such default, but such rights and remedies shall not be inconsistent with the general laws of this Commonwealth and the other provisions of this act.*

*(9) Any other matters, of like or different character, which in any way affect the security or protection of the holders of the bonds, notes or other obligations.*

*(b) Any pledge made by the agency is valid and binding from the time when the pledge is made. The revenues, moneys or property so pledged and thereafter received by the agency are immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all persons having claims of any kind in tort, contract or otherwise against the agency, whether or not such persons have notice thereof. Neither the proceedings of the agency relating to the bonds, notes or other obligations nor any other instrument by which a pledge is created need be recorded.*

*Section 5.3. Trust Indenture.—Bonds, notes or other evidences of indebtedness issued by the agency may be secured by a trust indenture or trust indentures by and between the agency and a corporate trustee, which may be any trust company or bank having the power of a trust company within or outside this Commonwealth. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the holders thereof, as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the agency in relation to the exercise of its statutory powers and the custody, safeguarding and application of all moneys. The agency may provide by such trust indenture for the payment of the proceeds of such obligations of the agency and the revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as the board of directors may determine. All expenses incurred in carrying out such trust indenture may be treated as part of the operating expenses of the agency. Such trust indenture may limit or abrogate the right of the holders of any bonds, notes or other*

*obligations of the agency to appoint a trustee under this act or limit the rights, powers and duties of such trustee.*

**Section 5.4. Rules and Regulations.**—*The rules and regulations of the agency under section 4(6) relating to the making of loans to lending institutions shall require that such loans:*

*(1) be evidenced by instruments delivered by each lending institution to the agency constituting such loan indebtedness a general obligation of such lending institution or other form of collateral acceptable to the board of directors; and*

*(2) be secured as to payment by a pledge of a lien upon collateral security.*

*The agency may require that any such security be lodged with a bank or trust company, located within or outside the Commonwealth, designated by the agency as custodian therefor.*

**Section 5.5. Bonds, Notes and Obligations as Legal Investments.**—*The bonds, notes and other evidences of indebtedness of the agency are securities in which all public officers and bodies of the Commonwealth and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, trust companies, savings banks and savings associations, savings and loan associations, investment companies, all administrators, guardians, executors, trustees and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the Commonwealth may properly and legally invest funds, including capital in their control or belonging to them.*

**Section 5.6. Tax Exemption.**—*It is hereby determined that the creation of the agency is in all respects for the benefit of the people of the Commonwealth, for the improvement of their health and welfare, and for the promotion of the economy, and that such purposes are public purposes and the agency will be performing an essential governmental function in the exercise of the powers conferred upon it by this act, and the Commonwealth covenants with the purchasers and all subsequent holders and transferees of bonds, notes and other obligations that the bonds, notes and other obligations of the agency issued pursuant to this act and the income therefrom shall at all times be free from taxation, except for estate or gift taxes and taxes on transfers.*

**Section 5.7. Covenant by Commonwealth not to Limit or Alter Powers Vested in Agency.**—*The Commonwealth of Pennsylvania does hereby pledge to, covenant and agree with the holders of any bonds, notes or other obligations issued pursuant to the authority of this act, that the Commonwealth will not limit or alter the rights or powers hereby vested in the agency to perform and fulfill the terms of any agreement made with the holders of such bonds, notes or other obligations, or in any way impair the rights or remedies of such holders.*

**Section 5.8. Severability.**—*(a) Except as provided in subsection (b), the provisions of this act are severable, and if any part or provisions*

*hereof, or the application thereof to any person or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remainder of this act or the application of such provision to any other person or circumstance, but shall be confined in its operation to the provision, person or circumstance directly involved in the controversy in which such judgment shall have been rendered.*

*(b) The provisions of section 5.1 which state that the bonds, notes or evidences of indebtedness of the agency shall not be deemed to constitute a debt of the Commonwealth or a pledge of the faith and credit or the taxing power of the Commonwealth are expressly made nonseverable.*

*Section 5.9. Venue.—Venue for all legal actions in which the agency is a party shall be proper in Dauphin County and, in the discretion of the agency, in any other county authorized by law.*

Section 6. The definition of "assistance grant" as set forth in section 3 of the act of July 18, 1974 (P.L.483, No.174), known as "The Institutional Assistance Grants Act," and all references to "assistance grant" contained in that act, are repealed insofar as they are inconsistent herewith.

Section 7. This act shall take effect immediately.

APPROVED—The 29th day of December, A. D. 1982.

DICK THORNBURGH