

No. 1989-50

AN ACT

HB 1450

Establishing the Philadelphia Regional Port Authority and providing for its powers and duties.

TABLE OF CONTENTS

- Section 1. Short title.
- Section 2. Legislative findings; declaration of policy.
- Section 3. Definitions.
- Section 4. Authority created.
- Section 5. Governing body.
- Section 6. Purposes and powers.
- Section 7. Purposes and powers; bonds.
- Section 8. Rights and remedies of obligees.
- Section 9. Deposits.
- Section 10. Audits and financial reports.
- Section 11. Contracts and purchases.
- Section 12. Use and operation of facilities.
- Section 13. Pledge by Commonwealth.
- Section 14. Exemption from taxes and assessments.
- Section 15. Interest of officers and employees.
- Section 16. Nondiscrimination.
- Section 17. Public meetings and records.
- Section 18. Sovereign immunity.
- Section 19. Transfer of existing facilities or funds.
- Section 20. Political subdivision cooperation.
- Section 21. Location of port facilities and projects.
- Section 22. Port zone boundary.
- Section 23. Construction of act.
- Section 24. Repeals.
- Section 25. Effective date.

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 Philadelphia Regional Port Authority Act.

Section 2. Legislative findings; declaration of policy.

(a) Legislative findings.—It is hereby determined and declared as a matter of legislative finding:

(1) Greater utilization of the Delaware River is necessary for the increased commerce and prosperity of the people of this Commonwealth.

(2) Increased commerce and prosperity of this Commonwealth require a more effective coordination of port facilities and port-related facilities and projects within an established regional port zone along the Delaware River.

(3) The long-term economic health of this Commonwealth requires reliable access to water-borne transportation on the Delaware River in conjunction with other forms of transportation.

(4) The expansion of industrial and commercial activities of this Commonwealth require the planning, designing, construction, erection, operation and management of port facilities and port-related facilities and projects within an established regional port zone along the Delaware River.

(5) The ability of regional port facilities along the Delaware River to handle cargo in a reliable, efficient and profitable manner is essential to the long-term economic health and growth of this Commonwealth.

(6) Increased regional port activities along the Delaware River will generate substantial direct and indirect employment and tax revenues for the entire Commonwealth and will stimulate labor-intensive and other support services which are essential to the economic well-being of this Commonwealth.

(7) The establishment of a port authority for governance of regional port activities along the Delaware River will promote economic growth within this Commonwealth and improve public safety, convenience and welfare.

(8) The creation of a port authority for governance of regional port activities along the Delaware River would provide an effective marketing tool for maintaining existing businesses and attracting new businesses while stimulating international trade and promoting industrial development within this Commonwealth.

(9) The creation of a port authority for governance of regional port activities along the Delaware River would provide a single and accountable legal entity for the conduct of regional port and port-related activities and business along the Delaware River and for this Commonwealth.

(10) It is intended that the port authority created by this act cooperate with local governments, interstate authorities and private enterprise for the purpose of advancing the regional port facilities and port-related projects and activities along the Delaware River for the increased convenience and improved access and welfare of the public, including the furtherance of cooperative state efforts for the unified development and use of port facilities and port-related projects which would benefit the interstate port region.

(b) Declaration of policy.—It is hereby declared to be the policy of the Commonwealth to promote the health, safety, employment, business opportunities and general welfare of the people of this Commonwealth by providing for the creation of a regional port authority, to be known as the Philadelphia Regional Port Authority, which shall exist and operate as a public instrumentality of this Commonwealth for the purpose contained in this act. Such purposes are hereby declared to be public purposes supporting the

enactment of all provisions of this act and for which public moneys may be spent and private property may be acquired by the exercise of the power of eminent domain in accordance with the provisions of this act.

Section 3. Definitions.

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

“Authority.” The body politic and corporate created by this act.

“Board.” The governing body of an authority.

“City.” A city of the first class coterminous with a county of the first class.

“County.” A county located in whole or in part within 20 miles of a city and having the Delaware River as a border.

“Federal Government.” The United States of America, the President of the United States of America and any department or corporation, agency or instrumentality heretofore or hereafter created, designated or established by the United States of America.

“Member.” A member of the board.

“Port district.” The combined territory of a city and all counties within the meaning of this act.

“Port facility.” All real and personal property used in the operation of a port terminal, including, but not limited to, wharves, piers, slips, ferries, docks, graving docks, drydocks, ship building and/or repair yards, bulkheads, dock walls, basins, carfloats, float-bridges, dredging equipment, radio receiving and sending stations, grain or other storage elevators, warehouses, cold storage, tracks, yards, sheds, switches, connections, overhead appliances, bunker coal, oil and fresh water stations, railroads, motor trucks, floating elevators, barges, scows or harbor craft of any kind, markets in every kind of terminal storage or supply depot, now in use or hereafter designed for use, to facilitate transportation and for the handling, storage, loading or unloading of freight or passengers at terminals, and equipment, materials and supplies therefore: Provided that it shall not include any hotel, retail, recreational, other than passenger cruise ships, or any residential facility for either temporary or permanent residents; nor shall it include any office which is not primarily used for or in connection with port-related commerce or industry.

“Port-related project.” Any real property, site, building, structure, equipment, furnishing and other facility or undertaking relating to industrial and commercial development activities within the port district necessary for the advancement of business and commerce associated with port facilities.

“Port terminal.” Without limitation, any marine, motor truck, railroad and air terminal, any coal, grain, bulk liquids and lumber terminal, and any union, freight, passenger and other terminals, used or to be used in connection with the transportation or transfer of freight, persons, personnel and equipment.

“Port zone.” The portion of the combined territory of a city and all counties within the meaning of this act which is within the Final Coastal

Zone Boundary established under the Pennsylvania Coastal Zone Management Program for the Delaware Estuary Coastal Zone under the provisions of the Coastal Zone Management Act of 1972 (Public Law 89-454, 16 U.S.C. § 1451 et seq.) and as set forth in the Pennsylvania Coastal Zone Management Program Technical Record dated December 1978.

“Qualified majority.” A majority of the board which includes three of the four members appointed pursuant to section 5(b)(2), (3), (4) and (5) and two of the four members appointed pursuant to section 5(b)(1).

Section 4. Authority created.

A body corporate and politic, to be known as the Philadelphia Regional Port Authority, is hereby created as a public authority and instrumentality of the Commonwealth. This authority shall exercise the powers of the Commonwealth as an agency of the Commonwealth.

Section 5. Governing body.

(a) **Power.**—The powers of the authority shall be exercised by a governing body having full authority to manage the properties and business of the authority, and to prescribe, amend and repeal bylaws, rules and regulations governing the manner in which the business of the authority may be conducted and the powers granted to it may be exercised. All bylaws, rules and regulations, and amendments thereto, shall be filed with the secretary of the authority.

(b) **Membership.**—The governing body shall be composed of 11 members who shall be residents of this Commonwealth, who shall not be elected public officials and who shall serve at the pleasure of the respective appointing authority, as follows:

(1) Four members initially appointed by the Governor for terms of one, two, three and four years, respectively, the term of each to be designated by the Governor at the time of appointment; but their successors shall each be appointed for a term of four years.

(2) One member appointed by the President *pro tempore* of the Senate for a term concurrent with the term of the appointing authority.

(3) One member appointed by the Minority Leader of the Senate for a term concurrent with the term of the appointing authority.

(4) One member appointed by the Speaker of the House of Representatives for a term concurrent with the term of the appointing authority.

(5) One member appointed by the Minority Leader of the House of Representatives for a term concurrent with the term of the appointing authority.

(6) The Governor shall appoint, for a term of two years, three members, one from each list of at least three nominees, each list prepared and submitted to the Governor respectively by the Mayor of the city and the governing bodies of the counties, which lists shall be submitted within 30 days of the effective date of this act. The Governor shall select a member from each list within 30 days of receipt of each list, or else may request one substitute list of nominees from any entity who prepares a list. If any entity permitted to submit a list fails to submit a list of nominees within 30 days or fails to submit a substitute list within 30 days of receipt

of a request to do so, the Governor may appoint such member or members, for which lists of nominees were not submitted, at his discretion. If the Governor fails to select a member from any list of nominees within 30 days of receipt of such list and fails to request a substitute list, or fails to select a member from the substitute list within 30 days of receipt of such list, the entity which prepared the list may appoint a member to serve on the board. Whenever a vacancy occurs prior to the completion of the term of office of a member appointed pursuant to this paragraph, the entity which prepared the list for the board member whose seat has become vacant shall submit a list of nominees to replace such member to the Governor.

(c) **Term.**—The term of a member shall begin on the date of appointment. A member may continue to serve as a member until a successor has been appointed and may serve more than one term.

(d) **Vacancies.**—Within 30 days of the occurrence of a vacancy, the original appointing authority designated in subsection (b) shall appoint a successor member for the remainder of the unexpired term of the member for which the vacancy exists. A vacancy shall occur upon the death, resignation, disqualification or removal of a member.

(e) **Organization.**—The Governor shall set a date, time and place for the initial organizational meeting of the board. Prior to the organizational meeting, the Governor shall select one member as chairman of the board for a term of two years. A majority of the board shall constitute a quorum for the conduct of business at the organizational meeting of the board. All action shall be taken at the organizational meeting by a majority of the board. The members shall elect from among themselves a vice chairman, secretary, treasurer and such other officers as they may determine.

(f) **Reorganization.**—The board shall reorganize annually at its first regular meeting occurring after the expiration of 365 days immediately following its initial organizational meeting or prior reorganization, as the case may be, in the manner provided for its initial organization. Prior to the reorganizational meeting, the Governor shall select one member as chairman of the board for a term of two years whenever the office of chairman is vacant by reason of expiration of the term of the office of chairman or otherwise.

(g) **Meetings.**—The board shall meet at least monthly. A majority of the board shall constitute a quorum for the purpose of conducting the business of the board and for all other purposes. All actions of the board shall be taken by a majority of the board unless specific provisions of this act require that action be taken by a qualified majority.

(h) **Expenses.**—A member shall not receive compensation or remuneration, but shall be entitled to reimbursement for all reasonable and necessary actual expenses.

(i) **Liability.**—A member shall not be liable personally on the bonds or other obligations of the authority, and the rights of creditors shall be solely against the authority.

(j) **Employees and agents.**—The board shall fix and determine the number of officers, agents and employees of the authority and their respec-

tive compensation and duties. The board shall, upon the approval of a qualified majority, delegate to the executive director such powers of the board as the board shall deem necessary to carry out the purposes of the authority, subject in every case to the supervision and control of the board.

(k) **Removal.**—A member shall be removed from the board for neglect or refusal to attend three successive regular meetings of the board, unless detained by a sickness or the death of a family member.

Section 6. Purposes and powers.

(a) **General powers.**—The authority is created for the purpose of acquiring, holding, developing, designing, constructing, improving, maintaining, managing, operating, financing, furnishing, fixturing, equipping, repairing, leasing or subleasing, as either lessor or lessee or sublessor or sublessee, and owning port facilities, port-related projects, or parts thereof, and equipment within the port district; and assuming under, and to the extent of, the terms and conditions of an agreement between the authority and the Philadelphia Port Corporation the functions, rights, powers, duties and obligations now or heretofore exercised by the Philadelphia Port Corporation.

(b) **Specific powers.**—The authority is granted and shall have and may exercise all powers necessary or convenient for performing or carrying out the aforesaid purposes, including, without limiting the generality of such purposes, the following rights and powers:

(1) To have perpetual existence and continuing succession.

(2) To sue and be sued, implead and be impleaded, complain and defend in all courts; to petition the Interstate Commerce Commission or any other regulatory body, either state or Federal; and to join in any proceeding before any such court or such commission or other regulatory body in any matter affecting the operation of the authority, any port-related project of the authority, or port facility of the authority.

(3) To adopt and use and alter at will a corporate seal.

(4) To establish a principal office within the port district and such other office or offices as may be necessary for the purpose of performing its duties and functions.

(5) To acquire, by gift or otherwise, purchase, hold, receive, lease, sublease and use any franchise, license, property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority.

(6) To sell, transfer, convey and dispose of any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the authority.

(7) To acquire by purchase, lease or otherwise, and to construct, improve, maintain, repair and operate, port facilities and port-related projects.

(8) To make, enter into and award contracts with any person, association, partnership or corporation for the development, design, financing, construction, improvement, maintenance, operation, management, furnishing, fixturing, equipping and repair of port facilities and port-related projects, or parts thereof.

(9) To make and, from time to time, amend and repeal bylaws, rules, regulations and resolutions for the management and regulation of the affairs of the authority and the performance of the functions and duties of the authority.

(10) To appoint officers, agents, employees and servants, and to prescribe their duties and fix their compensation, provided that the appointment of a full-time executive director shall be made by a qualified majority vote of the board.

(11) To borrow money, make and issue negotiable notes, bonds, refunding bonds and other evidences of indebtedness or obligations of the authority and to secure the payment of such bonds, or any part thereof, by pledge or deed of trust of all or any of its revenues, rentals and receipts, and to make such agreements with the purchasers or holders of such bonds or with others in connection with any such bonds, whether issued or to be issued, as the authority shall deem advisable and, in general, to provide for the security for said bonds and the rights of the holders thereof.

(12) To make and execute contracts and other instruments necessary or convenient for the conduct of its business and the exercise of the powers of the authority.

(13) To apply for and to accept appropriations, grants, loans and other assistance from, and to enter into contracts, agreements, leases, sub-leases, licenses or other transactions with the Federal Government, the Commonwealth, political subdivisions, persons, associations, partnerships or corporations for any of the purposes of the authority, provided that such contracts or agreements do not conflict with any of the provisions of any trust agreement securing the payment of bonds or certificates of the authority.

(14) To pledge, hypothecate or otherwise encumber all or any of the revenues or receipts of the authority as security for all or any of the obligations of the authority.

(15) To provide for self-insurance or to procure from insurers insurance containing coverages which the authority may determine to be necessary or desirable for its purposes, including, without limitation, insurance covering the property or operation of the authority against any risks or hazards and the timely payment in full of principal of and interest on bonds of the authority.

(16) (i) To enter into contracts of group insurance for the benefit of its employees.

(ii) To enroll its employees in the Commonwealth retirement system established pursuant to 71 Pa.C.S. Part XXV (relating to retirement for State employees and officers). Any employee of the authority who was previously employed by the predecessor Philadelphia Port Corporation shall have the option, within the limits specified in 71 Pa.C.S. Part XXV, to retain membership in the prior retirement system or transfer to the new retirement system.

(17) To enter into contracts with the Commonwealth, its agencies and instrumentalities, municipalities, political subdivisions or corporations, on

such terms as the authority shall deem proper for the use of any port facility, port-related project or property of the authority, and fixing the amount to be paid therefor.

(18) To have and exercise the power of eminent domain within the port zone in the manner prescribed by the act of June 22, 1964 (Sp.Sess., P.L.84, No.6) known as the Eminent Domain Code, including the taking of property of a utility not necessary or useful to the primary function of the utility.

(19) To enter into agreements with any public utility or private entity operating a railroad or any other transportation facility wholly or partially within the port district for the joint or exclusive use of any property of the authority or the public utility or the establishment of routes over the rights-of-way of the public utility or the authority or the establishment of joint rights.

(20) To establish an executive committee and such other standing and special committees that are deemed necessary in the furtherance of authority business.

(21) To do all acts and things necessary for the promotion of its business, and the general welfare of the authority to carry out the powers granted to it by this act or any other statute.

(22) To fix, alter, charge and collect fees, rates, rentals and other charges for port facilities and port-related projects of the authority at reasonable rates to be determined exclusively by the authority, subject to appeal, for the purpose of providing for the payment of the expenses of the authority, the acquisition, construction, improvement, repair, maintenance and operation of the port facilities, port-related projects and properties of the authority, the payment of the principal and interest on obligations of the authority, and to comply fully with the terms and provisions of any agreements made with the purchasers or holders of any such obligations. The authority shall determine by itself exclusively the port and port-related projects facilities to be operated by it and the services to be available to the public.

(23) To establish carrier routes and services between port facilities and port terminals, including water routes and water services, as it deems necessary for the efficient operation of port facilities, provided, that the authority shall not engage in the transportation of property by motor vehicle from port facilities or port terminals to other points within this Commonwealth or the port district without the approval of the Pennsylvania Public Utility Commission or in violation of the regulations of the Pennsylvania Public Utility Commission.

(c) Prohibition.—Notwithstanding any general or specific powers granted to the authority or the board by this act, whether express or implied:

(1) The authority shall have no power, at any time or in any manner, to pledge the credit or taxing power of the Commonwealth or any political subdivision.

(2) The authority shall have no power, at any time or in any manner, to issue negotiable notes, bonds, refunding bonds and other evidences of

indebtedness or obligations of the authority without the prior approval and written consent of the Governor.

(3) No obligations of the authority shall be deemed to be obligations of the Commonwealth or of any of its political subdivisions.

(4) The Commonwealth or any political subdivision thereof shall not be liable for the payment of principal or interest on obligations of the authority, excluding payments for lease agreements regarding the property of the authority.

(5) The authority shall be deemed an independent agency for the purposes of and within the meaning of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and shall not exercise any power or authority under this act which is inconsistent therewith.

(6) A comptroller shall be appointed in accordance with the provisions of section 214 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Section 7. Purposes and powers; bonds.

(a) Bond issues to be authorized.—The bonds of the authority, hereinabove referred to and authorized to be issued, shall be authorized by resolution of the board and shall be of such series, bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or fully registered without coupons, carry such registration, exchangeability and interchangeable privileges, be payable in such medium of payment and at such place or places, be subject to such terms of redemption, purchase or tender by the authority or the holder thereof with or without premium, and be entitled to such priorities in the revenues, rentals or receipts of the authority as such resolution or resolutions may provide. The bonds shall be signed by or shall bear the facsimile signatures of such officers as the authority shall determine, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of the treasurer of the authority, and all bonds shall be authenticated by an authenticating agent, fiscal agent or trustee, 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 coupon, or any officer of the authority, shall have ceased to be such officer at the time when such bonds shall actually be delivered.

(b) Sale.—

(1) The bonds of the authority may be sold at public or private sale, by negotiation or upon invitation, for such price or prices and at such rate or interest as the board shall determine.

(2) Before making any private sale by negotiation of bonds or notes, the board shall adopt, by a qualified majority vote, a resolution finding that a private sale by negotiation is in the best financial interest of the authority.

(3) Pending the preparation of the definitive bonds, interim receipts or temporary bonds may be issued to the purchaser or purchasers of the bonds and may contain such terms and conditions as the authority may determine.

(c) Negotiable instruments.—The bonds shall have all the qualities of negotiable instruments under 13 Pa.C.S. (relating to commercial code).

(d) Refunding.—Subject to the provisions of the outstanding bonds, notes or other obligations and subject to the provisions of this act, the authority shall have the right and power to refund any outstanding debt, in whole or in part, at any time and shall have the right and power to refund any outstanding notes with bonds or bonds with notes. The term “refund” and any of its variations shall mean the issuance and sale of obligations the proceeds of which are used, or are to be used, for the payment or redemption of outstanding obligations upon or prior to maturity.

(e) Resolutions.—Any resolution or resolutions authorizing bonds may contain provisions which shall be part of the contract with the holders thereof relating, without limitations, to the following:

(1) Pledging all or any of the revenues, rentals or receipts of the authority from all or any port facilities, port-related projects, property or operations of the authority, and providing for the obtaining of other security for the bonds such as letters of credit or bond insurance.

(2) The construction, improvement, operation, extension, enlargement, maintenance and repair of the port facilities, port-related projects and property of the authority and the duties of the authority with reference thereto.

(3) The terms and provisions of the bonds.

(4) Limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant of the Federal Government, the Commonwealth or a political subdivision, may be applied and invested.

(5) The rate of fees, rates, rentals and other charges for the use of port facilities, port-related projects and property of the authority or for services rendered by the authority, including limitations upon the power of the authority to modify any lease or other agreement pursuant to which fees, rates, rentals and other charges are payable.

(6) Make covenants to create or authorize the creation of special funds or accounts to be held in trust or otherwise for the benefit of holders of the bonds or of reserves for other purposes and as to the use, investment and disposition of moneys held in those funds, accounts or reserves.

(7) The terms and provisions of any trust indenture securing the bonds or under which the same may be issued.

(8) Any other or additional agreements with the holders of the bonds.

(f) Indentures and agreements.—The authority may enter into any trust indentures or other agreements with any bank or trust company or any person in the United States having power to enter into the same, including the Federal Government, as security for such bonds, and may assign and pledge any or all of the revenues, rentals or receipts of the authority thereunder. The trust indenture or other agreement may contain such provisions as may be customary in such instruments or as the authority may authorize, including, with limitation, provisions relating to the following:

(1) The construction, improvement, operation, maintenance and repair of port facilities, port-related projects and property and the duties of the authority with reference thereto.

(2) The application, disposition and investment of proceeds of bonds and other funds held under or pursuant to such trust indenture or agreement.

(3) The rights and remedies of the trustees and the holders of the bonds, including, without limitation, restrictions upon the individual right of action upon such bondholders.

(4) The terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

Section 8. Rights and remedies of obligees.

(a) General rule.—Subject to any contractual provisions or restrictions, an obligee shall have the following rights, in addition to any rights and remedies lawfully granted to such obligee:

(1) The right, by mandamus, suit, action or proceeding at law or in equity, to compel the authority and the members, officers, agents or employees thereof, to perform each and every term, provision and covenant contained in any bond or contract of the authority with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this act.

(2) The right, by proceeding in equity, to obtain an injunction against any acts or things which may be unlawful or in violation of the rights of such obligee of the authority.

(b) Receivers.—The authority shall have the power, by its resolution, trust indenture or mortgage, to confer upon any obligees holding or representing a specified percentage of bonds, the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction, to appoint a receiver of any real property or leasehold interest of the authority, and of the rents, profits and receipts therefrom, who shall have the authority as the court shall direct:

(1) To enter and take possession of such real property or any leasehold interest.

(2) To operate and maintain such real property or leasehold interests.

(3) To collect and receive all revenues or other income thereafter arising from such real property or leasehold interest and the operation thereof.

(4) To keep and maintain any moneys received under this authority in a separate account and apply the same in accordance with the obligations of the authority as the court shall direct.

(c) Restrictions.—Nothing in this section or any other section of this act shall authorize any receiver appointed pursuant to this act for the purpose of operating and maintaining any port facilities, port-related projects or property of the authority to sell, assign, mortgage or otherwise dispose of any of the assets, of whatever kind or character, belonging to the authority. It is the

intention of this act to limit the powers of such receiver to the operation and maintenance of the port facilities, port-related projects and property of the authority as the court shall direct, and no holder or holders of bonds of the authority, nor any trustee or other obligee, shall ever have the right in any suit, action or proceeding, at law or in equity, to compel a receiver, nor shall any receiver ever be authorized or any court be empowered to direct the receiver, to sell, assign, mortgage or otherwise dispose of any assets, of whatever kind or character belonging to the authority.

(d) **Accounting.**—The resolution, trust indenture or mortgage of the authority may confer upon any obligees holding or representing a specified percentage of bonds the right, in addition to all rights that may otherwise be conferred, to institute a suit, action or proceeding in any court of competent jurisdiction, upon the happening of an event of default as defined in such resolution or instrument, to require the authority and the members thereof to account as if the authority and such members were the trustees of an express trust.

Section 9. Deposits.

(a) **Payment.**—All moneys of the authority, from whatever source derived, shall be paid to the treasurer of the authority.

(b) **Investments.**—The board shall invest the funds of the authority in a manner consistent with sound business practice. The board shall establish an investment program subject to restrictions contained in this act and in any other applicable statute.

(c) **Authorized investments.**—The funds of the authority may be deposited or invested in the following manner:

(1) Direct obligations of or obligations guaranteed by the United States of America or the Commonwealth of Pennsylvania.

(2) Any bond, debenture, note, participation certificate or other similar obligation issued by any one or combination of the following agencies: Government National Mortgage Corporation, Federal Land Banks, Federal Home Loan Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Tennessee Valley Authority, United States Postal Service, Farmers Home Association, the Student Loan Marketing Association and Export-Import Bank of the United States.

(3) Any bond, debenture, note participation certificate or other similar obligation issued by the Federal National Mortgage Corporation to the extent such obligations are guaranteed by the Government National Mortgage Corporation or issued by any other Federal agency and backed by the full faith and credit of the United States of America.

(4) Deposits in interest-bearing time or demand deposits, or certificates of deposit, fully issued by the Federal Deposit Insurance Corporation, or its successors, or the Federal Savings and Loan Insurance Corporation, or its successors, or fully secured to the extent not so insured by any of the obligations described in paragraphs (1), (2) and (3) which have at all times an aggregate market value exclusive of accrued interest at least equal to the balance on deposit.

(5) Repurchase agreements relating to, or investment agreements secured by or providing for, the acquisition of and, if applicable, resale of, obligations described in paragraphs (1) through (4) or obligations of the Federal Home Loan Mortgage Corporation or Federal National Mortgage Association with:

(i) banks or trust companies (which may include any banking entity or depository);

(ii) brokers or broker-dealers registered under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. §§ 78a-78jj) acceptable to the authority; or

(iii) insurance companies rated A + or better by Best's and having a net capital and surplus of at least \$25,000,000 or certificates of deposit with such banks or trust companies fully secured as to principal and accrued interest by obligations described in paragraphs (1) through (4) deposited with or subject to the control of the authority.

(6) Money market deposit accounts of banks or trust companies having a net capital and surplus of at least \$25,000,000 (which may include any banking entity or depository).

The description of authorized investments in paragraphs (5) and (6) shall only be met if the agreements referenced therein provide for the repayment of the principal amount invested at an amount not less than that so invested. Whenever security is required as set forth in paragraphs (4) through (6), such security shall be deposited with the treasurer of the authority or be held by a trustee or agent satisfactory to the authority. Moneys of the authority shall be paid out on the warrant or other order of the chairman of the authority or of such other person or persons as the authority may authorize to execute such warrants or orders.

Section 10. Audits and financial reports.

The books, accounts, records, operations and assets and liabilities of the authority shall be audited annually in accordance with generally accepted auditing standards and principles by an independent certified public accountant. As soon after the end of each fiscal year and the completion of the audit as may be expedient, the authority shall file an annual report and financial statement, which shall include a certified copy of the audit report of the independent certified public accountant, with the Department of Commerce. A condensed and concise version of the annual financial report shall be published once in the Pennsylvania Bulletin and once a week for two consecutive weeks in at least one newspaper of general circulation within the port district. The Secretary of the Budget, the Auditor General, the Chairman and Minority Chairman of the Senate Appropriations Committee, and the Chairman and Minority Chairman of the House Appropriations Committee shall have the right to examine, from time to time and at any time, the books, accounts and records of the authority, including, but not limited to, its receipts, disbursements, contracts, leases, sinking funds, investments and other matters relating to the finances, operations and affairs of the authority.

Section 11. Contracts and purchases.

(a) **Building and construction contracts.**—All construction, reconstruction, repairs or work of any nature made by the authority, where the entire cost, value or amount of such construction, reconstruction, repairs or work, including labor and materials, exceeds \$10,000, except construction, reconstruction, repairs or work done by employees of the authority or by labor supplied under agreement with the Federal Government, the Commonwealth or political subdivisions, with supplies and material purchased as hereinafter provided, shall be done only under contract or contracts to be entered into by the authority with the lowest responsible bidder upon proper terms, after due public notice has been given asking for competitive bids as hereinafter provided. The authority shall have the right to reject any or all bids or select a single item from any bid notwithstanding the provisions of this section. No contract shall be entered into for construction or improvement or repair of any project or portion thereof, unless the contractor provides sufficient surety or sureties approved by the authority, and in amount fixed by the authority, for the performance of the contract, and has complied with the provisions of the act of December 20, 1967 (P.L.869, No.385), known as the Public Works Contractors' Bond Law of 1967. All such contracts shall provide that the person or corporation entering into such contract with the authority will pay for all materials furnished and services rendered for the performance of the contract, and that any person or corporation furnishing such materials or rendering such services may maintain an action to recover for the same against the obligor in the undertaking, as though such person or corporation was named therein, provided that the action is brought within one year after the time the cause of action accrued, and without prejudice to any other rights or remedies available pursuant to statute or law. Nothing in this section shall be construed to limit the power of the authority to construct, repair or improve any port facility, port-related project, property or project, or portion thereof, of the authority, or any addition, betterment or extension thereto, directly by the officers and employees of the authority.

(b) **Supplies and materials.**—All supplies and materials costing \$4,000 or more which are to be acquired directly by the authority shall not be purchased unless the authority has published notice, at least ten days before the award of any contract or the making of any purchase, in a newspaper of general circulation within the port district and in the Pennsylvania Bulletin. The authority shall accept the lowest bid or bids from a responsible bidder, provided that the kind and quality of materials are equal. The authority shall have the right to reject any or all bids or select a single item from any bid. The provisions of this subsection shall not apply to the purchase of any supplies and materials which are unique and which cannot be obtained in the open market.

(c) **Exception.**—Nothing in this section or in any other law of the Commonwealth shall preclude the negotiation and execution of contracts for management, operation, licensing or leasing of port facilities, port-related projects, or any part thereof, by the authority upon the approval of a majority of the members of the board. Notice and public advertisement provisions

of this section for the purchase of supplies and materials may be waived whenever the authority determines that an emergency exists and that such supplies and materials must be purchased by the authority immediately.

(d) Professional services.—Nothing in this section or any other law of this Commonwealth shall require the authority to competitively bid architectural design, engineering, concession services, construction management or other professional services required by the authority. Nevertheless, all such contracts not competitively bid shall be subject to the approval of a qualified majority vote of the board.

Section 12. Use and operation of facilities.

The use and operation of the port facilities, port-related projects and property of the authority and the operation of the business of the authority shall be subject to the rules and regulations adopted from time to time by the board, provided that the authority shall not be authorized to do anything which will impair the security of the holders of the obligations of the authority or violate any agreements with them or for their benefit, or violate any contracts, leases or other agreements awarded, made or entered into by the authority.

Section 13. Pledge by Commonwealth.

The Commonwealth does hereby pledge to and agree with any person or the Federal Government subscribing to or acquiring the bonds to be issued by the authority for the construction, extension, improvement or enlargement of any port facility, port-related project or property of the authority, or part thereof, that the Commonwealth will not limit or alter the rights hereby vested in the authority, until all bonds, at any time issued, together with the interest thereon, are fully met and discharged. The Commonwealth does further pledge to, and agree with the Federal Government, that in the event that the Federal Government shall construct or contribute any funds for the construction, extension, improvement or enlargement of any port facility, port-related project or property of the authority, or 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 port facility, port-related project or property of the authority, or the improvement thereof, or which would be inconsistent with the due performance of any agreements between the authority and the Federal Government, and the authority shall continue to have and may exercise all powers herein granted, so long as the same may be necessary or desirable for the carrying out of the purposes of this act and the purposes of the Federal Government and the construction or improvement or enlargement of the port facility, port-related project or property of the authority or such portion thereof.

Section 14. Exemption from taxes and assessments.

The effectuation of the authorized purposes of the authority created under this act shall and will be in all respects for the benefit of the people of this Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions; and since the authority will be performing essential government functions in effectuating such

purposes, the authority shall not be required to pay any taxes or assessments upon any property acquired or used by it for such purposes, or fees, bridge tolls or other charges imposed or authorized to be imposed by virtue of any law of the Commonwealth, except vehicle registration fees, liquid fuels taxes, fuel use taxes, gross receipts taxes imposed as an excise on the use of public highways, and tolls imposed by the Pennsylvania Turnpike Commission. The authority shall have the power to make payments in lieu of taxes or special assessments. The bonds issued by the authority, and their transfer and the income therefrom, including any profits made on the sale thereof, shall be free from State and local taxation within this Commonwealth, other than gift, estate, succession or inheritance taxes.

Section 15. Interest of officers and employees.

(a) Criminal conviction.—No person convicted of an infamous crime shall be employed as a management-level employee by the authority.

(b) Restricted activities and financial interests.—The provisions of the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law, and the act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act, are hereby made specifically applicable to members and officers and employees of the authority. For the purposes of application of such acts, employees of the authority shall be regarded as public employees of the Commonwealth, and members and officers of the authority shall be regarded as public officials of the Commonwealth, whether or not they receive compensation.

(c) Enforcement and penalties.—The employment of any person who violates the provisions of this section shall be terminated immediately by the appropriate person having the power to terminate employment. A person whose employment has been terminated under this provision shall be liable to the authority to reimburse the authority for all compensation received from the authority while employed in violation of this section.

(d) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Infamous crime.” Any violation and conviction for an offense which would disqualify an individual from holding public office pursuant to section 6 of Article II of the Constitution of Pennsylvania, or any conviction for a violation of this section or 18 Pa.C.S. § 4113 (relating to misapplication of entrusted property and property of government or financial institutions) or Ch. 47 (relating to bribery and corrupt influence), 49 (relating to falsification and intimidation), 51 (relating to obstructing governmental operations) or 53 (relating to abuse of office) or any other violation of the laws of the Commonwealth for which an individual has been convicted within the preceding ten years and which is classified as a felony, and any similar violations of the laws of any other state or the Federal Government.

“Management-level authority employee.” The chairman of the authority, members, legal counsel employed by the authority, the executive director of the authority and any authority employee with discretionary powers which may affect the outcome of a decision of the authority in relation to a private corporation or business or any employee who by virtue of job function could influence the outcome of such a decision.

“Person.” An individual, union, committee, club, corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint-stock company, receivership, trust or any legal entity organized for profit or as a not-for-profit corporation or organization, or other organization or group of persons.

Section 16. Nondiscrimination.

The authority shall comply in all regards with the nondiscrimination and contract compliance plans used by the Department of General Services, to assure that all persons are accorded equality of opportunity in employment and contracting by the authority and its contractors, subcontractors, assignees, lessees, agents, vendors and suppliers.

Section 17. Public meetings and records.

The authority shall be subject to the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act, and the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, relating to the inspection and copying of public records.

Section 18. Sovereign immunity.

It is hereby declared to be the intent of the General Assembly that the authority created by this act and its members, officers, officials and employees shall enjoy sovereign and official immunity, as provided in 1 Pa.C.S. § 2310 (relating to sovereign immunity reaffirmed; specific waiver), and shall remain immune from suit except as provided by and subject to the provisions of 42 Pa.C.S. § 8501 (relating to definitions) through 8528 (relating to limitations on damages). Notwithstanding the provisions of 42 Pa.C.S. § 8525 (relating to legal assistance), the authority, through its legal counsel, shall defend actions brought against the authority, or its members, officers, officials and employees when acting within the scope of their official duties.

Section 19. Transfer of existing facilities or funds.

A city, political subdivision, person or owner is hereby authorized to sell, lease or sublease from or to, lend, grant, transfer or convey or pay over to the authority, with or without consideration, any facility, port facility, port-related project, or any part or parts thereof, or any interest in property, real, personal or mixed, tangible or intangible, or any funds available, needed or obligated for development, acquisition, design, maintenance, management, operation, financing, leasing or subleasing, construction or improvement purposes, including the proceeds of bonds previously or hereafter issued for construction or improvement of port facilities, port-related projects or parts thereof. Any facility, port facility, port-related project, property or funds received by the authority pursuant to this section may be used for any lawful purpose of the authority. A city, political subdivision, person or owner is also authorized to transfer, sell, assign and set over to the authority any contracts or leases which may have been awarded or entered into by such city, political subdivision, person or owner for the construction of port facilities, port-related projects, ports, buildings or other structures, or parts thereof, including the improvement, operation or maintenance thereof.

Section 20. Political subdivision cooperation.

In addition and as a supplement to the powers conferred by any other law upon a political subdivision, a political subdivision may, upon such terms, with or without consideration, as it may determine, for the purpose of aiding and cooperating with the authority in the planning, acquisition, clearance, relocation, development, design, construction, rehabilitation, leasing, subleasing, alteration, expansion, financing, improvement, management or operation of a port facility, port-related project, or parts thereof:

(1) Dedicate, sell, convey, lease or otherwise transfer any of its property or any interest therein, real, personal or mixed, tangible or intangible, to the authority.

(2) Cause parking, recreational or community facilities, or any other works which it is otherwise empowered to undertake, to be furnished to a port facility, port-related project, or part thereof, or in or adjacent to any area adjacent to a port facility, port-related project, or parts thereof.

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roadways, roads, alleys, sidewalks or other places which it is otherwise empowered to do and which are located adjacent to a port facility, port-related project, or parts thereof, or adjacent to any area adjacent to a port facility, port-related project, or parts thereof.

(4) Enter into agreements, extending over any period of time, with the authority or with the Federal Government with respect to any action taken or to be taken by the authority.

(5) Do any and all things necessary or convenient to aid and cooperate in the development, acquisition, design, construction, improvement, maintenance, management, operation, furnishing, fixturing, equipping, repairing, financing, owning, leasing and subleasing of a port facility, port-related project, or parts thereof.

(6) Incur the entire expense of any public improvements made by the authority in the exercise of the powers granted to the authority by this act.

(7) Contract with the authority for the improvements, services and facilities to be provided for the benefit of the authority, port facilities, port-related projects, or parts thereof, or persons occupying such areas, provided that this provision shall not release the political subdivision from the duty to furnish, for the benefit of the authority, port facilities, port-related projects, or parts thereof, or the persons occupying such areas, customary improvements and such services and facilities as the political subdivision usually furnishes without a service fee.

Section 21. Location of port facilities and projects.

The authority may pursue its purposes and exercise its powers and authority under this act to locate port facilities and port-related projects within the port zone, notwithstanding any zoning ordinance or regulation adopted or enacted by a political subdivision under the authority of any statute, or under the authority of any home rule charter authorized and adopted under any statute or the Constitution of Pennsylvania.

Section 22. Port zone boundary.

Within 18 months after the effective date of this act, the authority shall prepare, publish in the Pennsylvania Bulletin, and thereafter maintain for public inspection at its principal office a detailed description of the port zone boundary in accordance with the Final Coastal Zone Boundary established under the Pennsylvania Coastal Zone Management Program for the Delaware Estuary Coastal Zone as set forth in the Pennsylvania Coastal Zone Management Program Technical Record dated December 1978, and shall prepare and thereafter maintain for public inspection at its principal office a detailed map of such port zone showing the boundary thereof.

Section 23. Construction of act.

This act constitutes the legislation required for implementation and applicability of section 7(e) of the act of October 21, 1988 (P.L.851, No.113), known as the Capital Budget Project Itemization Act for 1987-1988.

Section 24. Repeals.

All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 25. Effective date.

This act shall take effect immediately.

APPROVED—The 10th day of July, A. D. 1989.

ROBERT P. CASEY