

No. 1991-6

AN ACT

HB 209

Providing for the financial stability of cities of the first class; establishing an authority empowered to assist cities of the first class in their financial affairs and to issue findings and recommendations to cities of the first class and to the General Assembly; creating the authority and providing for its powers and duties; authorizing each city of the first class and the authority to enter into intergovernmental cooperation agreements and specifying certain terms of such agreements and ordinances whereby cities of the first class enter into such agreements; empowering the authority to incur indebtedness, receive revenues, acquire the obligations of assisted cities, make loans and offer other financial assistance to such cities subject to conditions; establishing procedures for the preparation and review of financial plans of cities of the first class while bonds of the authority are outstanding and providing remedies for failure to adhere to such plans; requiring certain contracts to be consistent with the financial plan; making certain provisions with respect to short-term borrowing by cities of the first class; establishing procedures for handling authority funds, and providing for certain payments to the authority; providing security for bonds and notes issued by the authority; authorizing the creation of a debt service reserve fund and providing for its maintenance; granting to the holders of the authority's indebtedness and to the authority certain remedies in the event of default by the authority or by an assisted city on authorized obligations; authorizing cities of the first class to receive financial assistance from the authority under certain terms and conditions; establishing the method for the appointment and composition of the authority board; prohibiting the authority and assisted cities from filing a petition under Federal bankruptcy statutes; authorizing an appropriation for authority operating expenses; authorizing cities of the first class to impose an optional sales and use tax; authorizing cities of the first class to impose certain taxes for the authority; authorizing emergency payment deferral; and providing jurisdiction for challenges to this act.

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

CHAPTER 1 GENERAL PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

Section 102. Purpose and legislative intent.

(a) Policy.—It is hereby declared to be a public policy of the Commonwealth to exercise its retained sovereign powers with regard to taxation, debt issuance and matters of Statewide concern in a manner calculated to foster the fiscal integrity of cities of the first class to assure that these cities provide for the health, safety and welfare of their citizens; pay principal and interest owed on their debt obligations when due; meet financial obligations to their employees, vendors and suppliers; and provide for proper financial planning procedures and budgeting practices. The inability of a city of the first class to provide essential services to its citizens as a result of a fiscal emergency is hereby determined to affect adversely the health, safety and welfare not only

of the citizens of that municipality but also of other citizens in this Commonwealth.

(b) Legislative intent.—

(1) It is the intent of the General Assembly to:

(i) provide cities of the first class with the legal tools with which such cities can eliminate budget deficits that render them unable to perform essential municipal services;

(ii) create an authority that will enable cities of the first class to access capital markets for deficit elimination and seasonal borrowings to avoid default on existing obligations and chronic cash shortages that will disrupt the delivery of municipal services;

(iii) foster sound financial planning and budgetary practices that will address the underlying problems which result in such deficits for cities of the first class, which city shall be charged with the responsibility to exercise efficient and accountable fiscal practices, such as:

(A) increased managerial accountability;

(B) consolidation or elimination of inefficient city programs;

(C) recertification of tax-exempt properties;

(D) increased collection of existing tax revenues;

(E) privatization of appropriate city services;

(F) sale of city assets as appropriate;

(G) improvement of procurement practices including competitive bidding procedures; and

(H) review of compensation and benefits of city employees; and

(iv) exercise its powers consistent with the rights of citizens to home rule and self-government.

(2) The General Assembly further declares that this legislation is intended to remedy the fiscal emergency confronting cities of the first class through the implementation of sovereign powers of the Commonwealth with respect to taxation, indebtedness and matters of Statewide concern. To safeguard the rights of the citizens to the electoral process and home rule, the General Assembly intends to exercise its power in an appropriate manner with the elected officers of cities of the first class.

(3) The General Assembly further declares that this legislation is intended to authorize the imposition of a tax or taxes to provide a source of funding for an intergovernmental cooperation authority to enable it to assist cities of the first class and to incur debt of such authority for such purposes; however, the General Assembly intends that such debt shall not be a debt or liability of the Commonwealth or a city of the first class nor shall debt of the authority payable from and secured by such source of funding create a charge directly or indirectly against revenues of the Commonwealth or a city of the first class.

Section 103. Legislative findings.

It is hereby determined and declared as a matter of legislative finding:

(1) That cities of the first class have encountered recurring financial difficulties which may affect the performance of necessary municipal services to the detriment of the health, safety and general welfare of residents of such cities.

(2) That the financial difficulties have caused cities of the first class to lose an investment-grade credit rating and direct access to capital markets.

(3) That it is critically important that cities of the first class achieve an investment-grade credit rating and thereafter maintain their credit-worthiness.

(4) That, without the ability to enter the capital markets, cities of the first class may face a fiscal emergency that could render them unable to pay their obligations when due and deliver essential services to their citizens.

(5) That, due to the economic and social interrelationship among all citizens in our economy, the fiscal integrity of cities of the first class is a matter of concern to residents of the entire Commonwealth, and the financial problems of such cities have a direct and negative effect on the entire Commonwealth.

(6) That, because cities of the first class consume a substantial proportion of the products of Pennsylvania's farms, factories, manufacturing plants and service enterprises, economic difficulties confronting cities of the first class detrimentally affect the economy of the Commonwealth as a whole and become a matter of Statewide concern.

(7) That, because residents of cities of the first class contribute a substantial proportion of all Commonwealth tax revenues, a disruption of the economic and social life of such cities may have a significant detrimental effect upon Commonwealth revenues.

(8) That cities of the first class and the Commonwealth have shown a willingness to cooperate in order to address important financial and budgetary concerns.

(9) That the financial difficulties of cities of the first class can best be addressed and resolved by cooperation between governmental entities.

(10) That the Constitution of Pennsylvania grants municipalities authority to cooperate with other governmental entities in the exercise of any function or responsibility.

(11) That the Commonwealth retains certain sovereign powers with respect to cities of the first class, among them the powers to authorize and levy taxes, to authorize the incurring of indebtedness and to provide financial assistance that may be necessary to assist cities in solving their financial problems.

(12) That the Commonwealth may attach conditions to grants of authority to incur indebtedness or assistance to cities of the first class in order to ensure that deficits are eliminated and access to capital markets is achieved and maintained.

(13) That such conditions shall be incorporated into inter-governmental cooperation agreements between the Commonwealth or its instrumentalities and cities of the first class.

(14) That cities of the first class and the Commonwealth will benefit from the creation of an independent authority composed of members experienced in finance and management which may advise such cities, the General Assembly and the Governor concerning solutions to fiscal problems cities of the first class may face.

(15) That the creation of such an authority with the power to borrow money and issue bonds in order to assist cities of the first class will allow such cities to continue to provide the necessary municipal services for their residents and to contribute to the economy of the Commonwealth.

(16) That, in order for an authority to effectively assist cities of the first class in financing their cash flow needs and for cities of the first class to be able to costeffectively finance their cash flow needs during the term of any authority bonds and thereafter, the enactment of certain provisions of law in connection with the issuance of tax and revenue anticipation notes of cities of the first class is necessary and desirable.

(17) That a dedicated source of funding for the authority is necessary in order to address the immediate financial difficulties of cities of the first class.

(18) That the Commonwealth's action in authorizing cities of the first class to impose taxes for the authority will allow such cities to continue to provide necessary services for their residents and for those nonresidents enjoying the benefits of such services.

(19) That the levy of a tax within cities of the first class for the authority should be authorized by the Commonwealth for the benefit of cities of the first class, with the revenue produced as a result of such levy being Commonwealth-authorized revenues and revenues of a State authority, and not revenues of the city of the first class.

(20) That the authority to levy a tax only within cities of the first class or at a rate that is higher than that imposed outside cities of the first class is based upon a legitimate classification which the General Assembly deems to be reasonable and just, since the benefit received by taxpayers in cities of the first class as a result of such levy is determined to be in proportion to the tax burden imposed in such cities of the first class.

(21) That a levy imposed only, or at a higher rate, in cities of the first class will be used to benefit citizens of cities of the first class by providing for their health, safety, convenience and welfare.

(22) That, if this act is challenged, a prompt, final ruling as to the legality of the authority created by this act and the validity of bonds issued by the authority will be necessary so that the authority will be able to enter capital markets to assist cities of the first class.

Section 104. 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:

"Assisted city." A city of the first class which receives assistance from the Pennsylvania Intergovernmental Cooperation Authority created by this act.

"Authority." The Pennsylvania Intergovernmental Cooperation Authority established in this act.

"Board." The governing board of the Pennsylvania Intergovernmental Cooperation Authority.

“Bond.” A note, bond, refunding note and bond, interim certificate, debenture and other evidence of indebtedness or obligation which an authority is authorized to issue pursuant to this act.

“Bond payment account.” A trust fund held exclusively for the equal and ratable benefit of the holders of bonds of the Pennsylvania Intergovernmental Cooperation Authority, as described in section 314(a) and (b).

“Cash flow deficit.” A cash deficit occurring solely because revenues and expenditures, even when in balance on a fiscal year basis, are not received and disbursed at equivalent rates throughout the fiscal year.

“City.” A city of the first class.

“City account.” A trust fund held for the exclusive benefit of an assisted city as described in section 314(c).

“Corporate entity.” An authority or other corporate entity of which one or more of the members of its governing board is appointed by the mayor of a city and which performs governmental functions for a city.

“Debt service reserve fund.” A fund which may be created by the authority and which shall be used, when required, solely for the payment of the principal of bonds secured in whole or in part by such fund, or of the sinking fund payments, if any, with respect to such bonds, the purchase or redemption of such bonds, the payment of interest on such bonds or the payment of any redemption premium required to be paid when such bonds and notes are redeemed prior to maturity, as described in section 313.

“Deficit.” Such negative fund balance in any principal operating fund or funds of a city existing or projected to exist as of the close of a fiscal year, as may be more specifically identified, calculated and set forth in an intergovernmental cooperation agreement or financial plan of an assisted city described in section 209.

“Federal agency.” 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.

“Financial ability to pay.” Financial ability to pay shall mean the reasonable likelihood that the assisted city will receive funds sufficient to pay the cost of any increase in wages or fringe benefits without requiring an increase in the rates of local taxation existing in the fiscal year immediately preceding the fiscal year when such increase is intended to take effect and without causing an adverse effect on the levels of service in the fiscal year when such increase is intended to take effect.

“Governing body.” The legislative body of a city.

“Government agency.” The Governor, departments, boards, commissions, authorities and other officers and agencies of State government, including those which are not subject to the policy supervision and control of the Governor, any political subdivision, municipal or other local authority, and any officer or agency of any such political subdivision or local authority, but the term does not include any court or other officer or agency of the unified judicial system or the General Assembly or its officers and agencies.

“Intergovernmental cooperation agreement.” Any agreement made by the Pennsylvania Intergovernmental Cooperation Authority and a city under the provisions of section 203(d).

“Loan committee.” The mayor, the city controller and city solicitor of a city of the first class.

“Net proceeds.” The aggregate principal amount of any bonds issued by the Pennsylvania Intergovernmental Cooperation Authority reduced by any amount of such bonds constituting interest under the Internal Revenue Code of 1986 (Public law 99-514, 26 U.S.C. § 1 et seq.) or any successor or amendatory revenue act and further reduced by the portion of the aggregate principal amount of such bonds issued for any of the following purposes:

- (1) fund any reserve, including a debt service reserve fund, established for the Pennsylvania Intergovernmental Cooperation Authority’s bonds;
- (2) provide capitalized interest on bonds;
- (3) pay fees or premiums in connection with any policy of municipal bond insurance or other credit enhancement or liquidity facility; and
- (4) repay the amount set forth in section 701, fund up to \$500,000 of initial operating expenses and pay any costs of issuance relating to such bonds.

“Obligee of the authority.” Any holder or owner of any bond of the Pennsylvania Intergovernmental Cooperation Authority or any trustee or other fiduciary for any such holder or any provider of a letter of credit, policy of municipal bond insurance or other credit enhancement or liquidity facility for bonds of the authority.

“Outstanding.” With respect to bonds of the authority, shall mean all bonds of the authority issued from time to time except:

- (1) bonds purchased by the authority or the city for cancellation by the authority or otherwise required to be canceled by the authority; and
- (2) bonds for the payment of the principal of and interest on which moneys or investments sufficient to make such payments timely have been irrevocably deposited with a fiduciary for obligees of the authority owning such bonds.

“Party officer.” The following members or officers of any political party:

- (1) a member of a national committee;
- (2) a chairman, vice chairman, secretary, treasurer or counsel of a State committee or member of the executive committee of a State committee;
- (3) a county chairman, vice chairman, counsel, secretary or treasurer of a county committee; or
- (4) a city chairman, vice chairman, counsel, secretary or treasurer of a city committee.

“Public official.” Any elected or appointed official or employee in the executive, legislative or judicial branch of the Commonwealth or any political subdivision thereof, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense, or to otherwise exercise the power of the

Commonwealth or any political subdivision thereof. The term "public official" shall not include any appointed official who receives no compensation other than reimbursement for actual expenses.

"Qualified majority." A majority of the governing board of the Pennsylvania Intergovernmental Cooperation Authority which includes any four voting members.

"School district." A school district of the first class.

"Tax anticipation notes" or "notes." Tax anticipation notes, revenue anticipation notes or tax and revenue anticipation notes authorized to be issued pursuant to Chapter 4 and designated as prescribed in section 401.

CHAPTER 2 PENNSYLVANIA INTERGOVERNMENTAL COOPERATION AUTHORITY

Section 201. Authority created.

A body corporate and politic to be known as the Pennsylvania Intergovernmental Cooperation Authority is hereby created as a public authority and instrumentality of the Commonwealth, exercising public powers of the Commonwealth as an agency and instrumentality thereof. The exercise by the authority of the powers conferred by this act is hereby declared to be and shall for all purposes be deemed and held to be the performance of an essential public function.

Section 202. Governing board.

(a) Composition of board.—The powers and duties of the authority shall be exercised by a governing board composed of five members:

(1) One member shall be appointed by the Governor.

(2) One member shall be appointed by the President pro tempore of the Senate.

(3) One member shall be appointed by the Minority Leader of the Senate.

(4) One member shall be appointed by the Speaker of the House of Representatives.

(5) One member shall be appointed by the Minority Leader of the House of Representatives.

(6) The Secretary of the Budget of the Commonwealth and the Director of Finance of each assisted city shall serve as ex officio members of the board. The ex officio members may not vote, shall not be counted for purposes of establishing a quorum and may designate in writing a representative of their respective offices to attend meetings of the board on their behalf.

(7) All members shall have had experience in finance or management.

(8) All members of the board shall be residents of the Commonwealth and, except the Secretary of the Budget, shall either be residents of the assisted city or have their primary places of business or employment in such city.

(b) Term.—Appointing authorities shall appoint the initial members of the board within 10 days of the effective date of this act. The term of a board

member shall begin on the date of appointment. A member's term shall be coterminous with that of his or her appointing authority, provided that the member's term shall continue until his or her replacement is appointed. Board members shall serve at the pleasure of his or her appointing authority. Whenever a vacancy occurs on the board, whether prior to or on the expiration of a term, the appointing authority who originally appointed the board member whose seat has become vacant shall appoint a successor member within 30 days of the vacancy. A member appointed to fill a vacancy occurring prior to the expiration of a term shall serve the unexpired term.

(c) Organization.—The appointee of the Governor shall set a date, time and place for the initial organizational meeting of the board within ten days of the appointment of the initial members of the board. The members shall elect from among themselves a chairperson, vice chairperson, secretary, treasurer and such other officers as they may determine. A member may hold more than one office of the board at any time.

(d) Meetings.—The board shall meet as frequently as it deems appropriate but at least once during each quarter of the fiscal year. In addition, a meeting of the board shall be called by the chairperson if a request for a meeting is submitted to the chairperson by at least two members of the board. 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. The act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act, shall apply to the board.

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

(f) Public officials and party officers.—

(1) Except for the Secretary of the Budget of the Commonwealth and the Director of Finance of an assisted city, neither members of the board nor the executive director shall seek or hold a position as any other public official within this Commonwealth or as a party officer while in the service of the authority. Members of the board and the executive director shall not seek election as public officials or party officers for one year after their service with the authority. Members of the authority and the executive director may serve as appointive public officials any time after their periods of service with the authority.

(2) Employees of the authority shall not seek or hold other positions as public officials or party officers while in the employ of the authority; provided, however, that the authority may receive the loan of services of persons in other government agencies in accordance with subsection (g), notwithstanding that such persons are public officials. Employees of the authority shall not seek election as public officials or party officers for one year after leaving the employ of the authority.

(g) Employees and agents.—The board shall fix and determine the number of employees of the authority and their respective compensation and

duties. The board may contract for or receive the loan of services of persons in the employ of other government agencies, and other government agencies shall be authorized to make such employees available. The board shall retain an executive director upon the vote of a qualified majority. The board shall, by the vote of a qualified majority, hire an independent general counsel to the authority and may engage consultants and contract for other professional services upon the vote of a qualified majority. 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.

(h) Statutes applying to authority.—The provisions of the following acts shall apply to the authority: The act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law; the act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act; and the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law; provided, however, that, notwithstanding the provisions of the State Adverse Interest Act, the Secretary of the Budget and the Director of Finance of each assisted city shall, while serving as ex officio members of the board, also serve in their official capacities with respect to the negotiation and execution of intergovernmental cooperation agreements and other agreements between an assisted city and the authority.

(i) Limitation on action.—Notwithstanding the provisions of section 706, if any provision of this section is held invalid by a court of competent jurisdiction, the authority shall not borrow further moneys nor issue further bonds, nor shall the authority further disburse to a city proceeds of any issue of bonds authorized theretofore to fund a deficit of a city or to provide other financial assistance to a city; to finance any cash flow deficit of a city; or to purchase any obligations of a city issued to finance cash flow deficits; or to pay the costs of capital projects, but all provisions of outstanding bonds of the authority and all rights and remedies of obligees of the authority under this act shall be and shall remain valid and enforceable.

Section 203. Powers and duties.

(a) General powers and duties.—The authority is established for the purposes, without limitation, by itself or by agreement in cooperation with others, of assisting cities in solving their budgetary and financial problems and helping cities achieve and maintain access to the capital markets.

(b) Specific duties.—The authority shall have the powers and its duties shall be:

(1) To assist cities in achieving financial stability in any manner consistent with the purposes and powers described by this act.

(2) To assist cities in avoiding defaults, eliminating and financing deficits, maintaining sound budgetary practices and avoiding the interruption of municipal services.

(3) To borrow money and issue bonds to assist cities.

(4) To negotiate intergovernmental cooperation agreements with cities containing such terms and conditions as will enable such cities to eliminate

and avoid deficits, maintain sound budgetary practices and avoid interruption of municipal services.

(5) To make annual reports within 120 days of the close of the authority's fiscal year, commencing with the fiscal year ending June 30, 1992, to the Governor and the General Assembly describing its progress with respect to restoring the financial stability of assisted cities and achieving balanced budgets for assisted cities, such reports to be filed with the Governor, with¹ the presiding officers of the Senate and the House of Representatives, with the chairperson and minority chairperson of the Appropriations Committee of the Senate and the chairperson and the minority chairperson of the Appropriations Committee of the House of Representatives and with the governing body, mayor and controller of the assisted city.

(6) To comply with the provisions of section 317 concerning the maximum amount of the first series of authority bonds and the date of issuance thereof.

(c) Specific powers.—In addition to the powers and duties set forth elsewhere in this act, the authority shall have the specific powers:

(1) To obtain copies of all reports regarding the revenues, expenditures, budgets, costs, plans, operations, estimates and any other financial or budgetary matters of an assisted city or any corporate entity.

(2) To obtain additional reports on the above matters in such form as are deemed necessary by the authority.

(3) To make factual findings concerning an assisted city's budgetary and fiscal affairs.

(4) To make recommendations to an assisted city concerning its budgetary and fiscal affairs.

(5) To make recommendations to the Governor and the General Assembly regarding legislation or resolutions that affect Commonwealth aid or mandates to an assisted city or that concern an assisted city's taxing powers or relate to an assisted city's fiscal stability.

(6) To provide financial assistance, including loans and grants, to assist cities upon such terms and conditions as may be approved by a qualified majority of the board or as may be specified by the General Assembly to eliminate or prevent deficits of a city.

(7) Subject to any limitations in agreements with obligees of the authority, to enter into and amend as shall be necessary from time to time intergovernmental cooperation agreements with a city provided that such agreements and amendments are approved by a qualified majority of the board.

(8) To exercise, while any bonds issued by the authority to assist the city remain outstanding, powers of review concerning the budgetary and fiscal affairs of that city consistent with this act and the city's home rule charter or other optional plan of government.

(9) To receive revenues from any source, directly or by assignment, pledge or otherwise.

¹ "with" omitted in enrolled bill.

(10) To sue and be sued, implead and be impleaded, complain and defend in all courts.

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

(12) To make bylaws for the management and regulation of its affairs and adopt rules, regulations and policies in connection with the performance of its functions and duties which, notwithstanding any other provision of law to the contrary, shall not be subject to review pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

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

(14) To appoint officers, agents, employees and servants and to prescribe their duties and to fix their compensation as set forth in section 202(g).

(15) To retain counsel and auditors to render such professional services as the authority deems appropriate. The authority shall not be considered either an executive agency or an independent agency for the purpose of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, but shall possess the same status for such purpose as the Auditor General, State Treasurer and the Pennsylvania Public Utility Commission; except that the provisions of section 204(b) and (f) of the Commonwealth Attorneys Act shall not apply to the authority; notwithstanding the provisions of section 221(1) of the act of October 5, 1980 (P.L.693, No.142), known as the JARA Continuation Act of 1980, 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.

(16) To cooperate with any Federal agency or government agency.

(17) 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. However, the authority shall be absolutely limited in its power to acquire real property under this act to real property that will be used only for the office space in which the authority will conduct its daily business.

(18) To sell, transfer, convey and dispose of any property, real, personal or mixed, tangible or intangible or any interest therein.

(19) To enter into contracts for group insurance and to contribute to retirement plans for the benefit of its employees and to enroll its employees in an existing retirement system of a government agency.

(20) To accept,¹ purchase or borrow equipment, supplies, services or other things necessary or convenient to the work of the authority from other government agencies, and all government agencies are authorized to sell, lend or grant to the authority such equipment, supplies, services or other things necessary or convenient to the work of the authority.

(21) To borrow money for the purpose of assisting a city, or in anticipation of the receipt of income of the authority or of an assisted city and

¹ "accept from," in enrolled bill.

to evidence the same; make and issue bonds of the authority; secure the payment of such bonds or any part thereof, by pledge of or security interest in all or any of its revenues, receipts, accounts, tangible personal property and contract rights; make such agreements with the purchasers or holders of such bonds or with other obligees of the authority in connection with any bonds, whether issued or to be issued, as the authority shall deem advisable, which agreements shall constitute contracts with such holders or purchasers; obtain such credit enhancement or liquidity facilities in connection with any bonds as the authority shall determine to be advantageous; and, in general, provide for the security for said bonds and the rights of the holders thereof.

(22) To lend, grant or otherwise transfer or pledge for the benefit of an assisted city such assets, including proceeds of bonds, as the authority deems appropriate, to be used by such a city as capital or operating funds as provided in an intergovernmental cooperation agreement, to refinance or secure debt of an assisted city or for other purposes consistent with this act.

(23) To enter into agreements with an assisted city that receives funds or other financial assistance from the authority pursuant to which such city may pledge assets, rights, revenues and receipts, including tax revenues, to secure the repayment of such funds or assistance by such city if such security is required by the authority.

(24) To invest any funds held by the authority as set forth in section 311(b).

(25) To receive and hold assets, moneys and funds from any source, including, but not limited to, appropriations, grants, gifts and such tax revenues as may be allocated or directed to it by law for the purposes of securing authority indebtedness and providing assistance to cities in accordance with this act.

(26) To procure such insurance, guarantees and sureties containing such coverages, including, without limitation, contracts insuring or guaranteeing the timely payment in full of principal, interest and premium, if any, on bonds of the authority, or providing liquidity for purchase of bonds of the authority, in such amounts, from such insurers, sureties, guarantors or other parties as the authority may determine to be necessary or desirable for its purposes.

(27) To pledge the credit of the authority in the manner provided in section 304.

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

(d) Intergovernmental cooperation agreements.—The authority shall have the power and its duty shall be to enter into and to implement fully such intergovernmental cooperation agreements with cities as are approved by a qualified majority of the board. No bonds may be issued by the authority until an intergovernmental cooperation agreement has been approved by a qualified majority of the board, except that the authority, at anytime during

the first 45 days after the effective date of this act, may enter into an interim financing arrangement in anticipation of the initial bond issue without an intergovernmental cooperation agreement in effect. Such agreements, including, but not limited to, the initial agreements described in section 209(a), may include such definitions and procedures as may be necessary to implement the financial planning process set forth in sections 209 and 210. Intergovernmental cooperation agreements as well as other service agreements to provide assistance to a city shall not be deemed to create debt of the city. Intergovernmental cooperation agreements shall contain such terms and be negotiated in such manner as the authority and an assisted city shall determine consistent with this act and the Constitution of Pennsylvania.

(1) A city may enter into an intergovernmental cooperation agreement in which it, consistent with this act, covenants to cooperate or agree in the exercise of any function, power or responsibility with, or delegate or transfer any function, power or responsibility to, the authority upon the adoption by the governing body of such city of an ordinance authorizing and approving the intergovernmental cooperation agreement.

(2) An ordinance that authorizes a city to enter into an intergovernmental cooperation agreement with the authority shall specify:

- (i) the purpose and objectives of the agreement;
- (ii) the conditions of the agreement; and
- (iii) the term of the agreement, including provisions relating to its termination.

(3) Except for assistance provided through an interim financing arrangement, as provided for in this subsection, or assistance necessary to enable a city to pay principal of or interest on its outstanding bonds, or lease payments securing bonds of other government agencies, as provided for in section 209(a), no assistance shall be provided by the authority to a city unless an intergovernmental cooperation agreement is in effect.

(e) Limitation.—Notwithstanding any purpose or general or specific power granted by this act or any other act, whether express or implied:

(1) The authority shall have no power to pledge the credit or taxing powers of the Commonwealth or any other government agency, including an assisted city, except the credit of the authority created by this act, nor shall any of the bonds of the authority be deemed a debt or liability of the Commonwealth or of any other government agency, including a city.

(2) Neither the Commonwealth nor any government agency, including a city, except the authority created by this act, shall be liable for the payment of the principal, interest or premium on any such bonds.

(3) Notwithstanding any provision of this or any other law to the contrary, or of any implication that may be drawn therefrom, the Commonwealth and all other government agencies, except the authority but including an assisted city (unless otherwise agreed to by such city pursuant to this act), shall have no legal or moral obligation for the payment of any expenses or obligations of the authority, including, but not limited to, bond principal and interest, the funding or refunding of any reserves and

any administrative or operating expenses whatsoever, other than for the advance of funds for initial operating expenses of the authority contained in section 701 to be repaid by the authority as set forth in sections 206(c) and 701.

(4) Bonds of the authority shall contain a prominent statement of the limitation set forth in this subsection and shall further recite that obligees of the authority shall have no recourse, either legal or moral, to the Commonwealth or to any other government agency, including the city, for payment of such bonds.

Section 204. Term of existence of authority.

The authority shall have continuing existence and succession for a term not exceeding one year after all of its liabilities, including, without limitation, its bonds, have been fully paid and discharged. Upon the termination of the existence of the authority, all of its rights and properties, including funds remaining in the debt service reserve fund, shall be paid to the Commonwealth to the extent the Commonwealth has contributed such rights or property; otherwise, such rights or property shall pass to and be vested in the assisted city.

Section 205. Fiscal year.

The fiscal year of the authority shall be the same as the fiscal year of the Commonwealth.

Section 206. Annual budget of authority.

(a) **Budget.**—Before March 1 of each year, the authority shall adopt a budget by a qualified majority of the board setting forth in reasonable detail the projected expenses of operation of the authority for the ensuing fiscal year (exclusive of the amounts set forth in paragraphs (1), (2), (3) and (4)), including, but not limited to, the salary and benefits of the executive director and any other employees of the authority, and the projected revenues of the authority to be derived from investment earnings and any other moneys of the authority which are estimated to be available to pay the operating expenses set forth in the budget. A copy of the authority's budget shall be submitted to the Governor and to the General Assembly. The authority or its designated representatives may be afforded an opportunity to appear before the Governor and the Appropriations Committee of the Senate and the Appropriations Committee of the House of Representatives regarding the authority's budget. The following information shall be submitted with the authority's budget:

(1) the total amount of debt service to become due on authority bonds for such ensuing fiscal year, including payments of interest and principal, maturity value or sinking fund payments;

(2) the amount, if any, due to any provider of any credit or liquidity facility representing payments made by such provider as provided in the applicable resolution or trust indenture as a result of any previous failure of the authority to make any payment provided for in the applicable resolution or trust indenture, including any related reasonable interest, fees or charges so provided;

(3) the amount, if any, required to restore the debt service reserve fund to the level required under section 313 and the resolution of the authority establishing such fund; and

(4) the amount, if any, required to be rebated to the United States to provide for continued Federal tax exemption for bonds of the authority.

(b) **Limit on operating expenses.**—Following the submission of the authority's budget to the Governor and the General Assembly and any hearing held by an appropriations committee under subsection (a), the General Assembly, by concurrent resolution with presentment to the Governor, in accordance with section 9 of Article III of the Constitution of Pennsylvania, may limit the operating expenses of the authority. In that event, it shall be unlawful for the authority to spend more for operating expenses than the limit established for that fiscal year by the concurrent resolution. If the General Assembly does not adopt a concurrent resolution prior to May 30, the authority's budget shall be deemed approved for that fiscal year.

(c) **Sources of payment of authority expenses.**—Authority operating expenses shall be budgeted and paid first from the revenues derived from the investment income of the authority and then from other moneys of the authority described in subsection (a) or from a tax imposed pursuant to Chapter 6 as permitted in subsection (a). The amount appropriated in section 701 shall be repaid by the authority from such sources or from the proceeds of the initial issue of bonds by the authority, and up to \$500,000 of initial authority operating expenses may be funded with proceeds of the initial issue of bonds. The Commonwealth shall not be responsible for funding the annual budget of the authority.

(d) **Examination of books.**—The chairperson and minority chairperson of the Appropriations Committee of the Senate and the chairperson and minority chairperson of the Appropriations Committee of the House of Representatives shall have the right at any time to examine the books, accounts and records of the authority.

Section 207. Annual report to be filed; annual audits.

Every authority shall file an annual report with the chairperson and the minority chairperson of the Appropriations Committee of the Senate and chairperson and the minority chairperson of the Appropriations Committee of the House of Representatives, which shall make provisions for the accounting of revenues and expenses. The authority shall have its books, accounts and records audited annually in accordance with generally accepted auditing standards by an independent auditor who shall be a certified public accountant, and a copy of his audit report shall be attached to and be made a part of the authority's annual report. A concise financial statement shall be published annually in the Pennsylvania Bulletin.

Section 208. Authority's financial assistance to cities.

(a) **Loans.**—Provided the authority has entered into an inter-governmental cooperation agreement with a city and there is an approved financial plan in effect, the authority may render financial assistance to the city in the form of loans and grants from authority funds, including proceeds from bonds, and the city may borrow or receive such funds for any lawful

purpose. However, if the authority has not entered into an inter-governmental cooperation agreement with a city or if there is not an approved financial plan in effect, the authority shall not render financial assistance to the city except for any amounts necessary to enable such city to pay principal of or interest on its outstanding bonds, or lease payments securing bonds of other government agencies, as provided for in section 209(a). Loans and grants authorized by this section shall be made on such terms and conditions as a qualified majority of the board shall approve.

(b) *City pledge.*—A city may pledge any available source of revenue to secure payments due to the authority under any agreement with the authority, including an intergovernmental cooperation agreement. Any pledge of revenues made by a city for these purposes, including, without limitation, a pledge of tax revenues, shall be binding and enforceable upon such city and its governing body for as long as any agreement secured by such pledge remains outstanding. A city shall take no action during the term of such agreement, or so long as bonds secured by payments under such agreement are outstanding, that would transfer for another purpose or reduce pledged revenues, or take any other action which would impair the rights of the authority or obligees of the authority.

(c) *Additional city appropriations.*—A city that receives a loan or grant from the authority after such city has adopted its operating budget may, at any time during the course of a fiscal year, make additional appropriations to the extent of the proceeds of such loan or grant received or to be received by such city in such fiscal year.

Section 209. Financial plan of an assisted city.

(a) *Requirement of a financial plan.*—While any bonds issued by the authority to assist a city remain outstanding, an assisted city shall develop, implement and periodically revise a financial plan as described in this section. The authority shall not provide the net proceeds of the initial bond issue described in section 317 and any subsequent bond issue, other than any amounts necessary to enable such city to pay principal of or interest on its outstanding bonds, or lease payments securing bonds of other government agencies, which payments, in the authority's discretion, may be made directly to the paying agents for such bonds, until the authority and the city have agreed upon such a plan.

(b) *Elements of plan.*—The financial plan shall include:

(1) Projected revenues and expenditures of the principal operating fund or funds of the city for five fiscal years consisting of the current fiscal year and the next four fiscal years.

(2) Plan components that will:

(i) eliminate any projected deficit for the current fiscal year and for subsequent fiscal years;

(ii) restore to special fund accounts money from those accounts used for purposes other than those specifically authorized;

(iii) balance the current fiscal year budget and subsequent budgets in the financial plan through sound budgetary practices, including, but not limited to, reductions in expenditures, improvements in productivity, increases in revenues or a combination of these steps;

(iv) provide procedures to avoid a fiscal emergency condition in the future; and

(v) enhance the ability of the city to regain access to the short-term and long-term credit markets.

(c) Standards for formulation of plan.—

(1) All projections of revenues and expenditures in a financial plan shall be based on reasonable and appropriate assumptions and methods of estimation, all such assumptions and methods to be consistently applied.

(2) All revenue and appropriation estimates shall be on a modified accrual basis in accordance with generally accepted standards. Revenue estimates shall recognize revenues in the accounting period in which they become both measurable and available. Estimates of city-generated revenues shall be based on current or proposed tax rates, historical collection patterns and generally recognized econometric models. Estimates of revenues to be received from the State government shall be based on historical patterns, currently available levels or on levels proposed in a budget by the Governor. Estimates of revenues to be received from the Federal Government shall be based on historical patterns, currently available levels or on levels proposed in a budget by the President or in a congressional budget resolution. Nontax revenues shall be based on current or proposed rates, charges or fees, historical patterns and generally recognized econometric models. Appropriation estimates shall include, at a minimum, all obligations incurred during the fiscal year and estimated to be payable during the fiscal year or in the 24-month period following the close of the current fiscal year and all obligations of prior fiscal years not covered by encumbered funds from prior fiscal years. Any deviations from these standards of estimating revenues and appropriations proposed to be used by a city shall be specifically disclosed and shall be approved by a qualified majority of the board.

(3) All cash flow projections shall be based upon reasonable and appropriate assumptions as to sources and uses of cash, including, but not limited to, reasonable and appropriate assumptions as to the timing of receipt and expenditure thereof, and shall provide for operations of the assisted city to be conducted within the resources so projected. All estimates shall take due account of the past and anticipated collection, expenditure and service demand experience of the assisted city and of current and projected economic conditions.

(d) Form of plan.—Each financial plan shall, consistent with the requirements of an assisted city's home rule charter or optional plan of government:

(1) be in such form and shall contain:

(i) for each of the first two fiscal years covered by the financial plan, such information as shall reflect an assisted city's total expenditures by fund and by lump sum amount for each board, commission, department or office of an assisted city; and

(ii) for the remaining three fiscal years of the financial plan, such information as shall reflect an assisted city's total expenditures by fund and by lump sum amount for major object classification;

(2) include projections of all revenues and expenditures for five fiscal years, including, but not limited to, projected capital expenditures and short-term and long-term debt incurrence and cash flow forecasts by fund for the first year of the financial plan;

(3) include a schedule of projected capital commitments of the assisted city and proposed sources of funding for such commitments; and

(4) be accompanied by a statement describing, in reasonable detail, the significant assumptions and methods of estimation used in arriving at the projections contained in such plan.

(e) Annual submission of plan.—An assisted city shall develop, and the authority shall review and act upon, an initial five-year financial plan for the city as soon as practicable after the effective date of this act. During each subsequent fiscal year while bonds of the authority are outstanding, the mayor or chief executive officer of each assisted city shall, at least 100 days prior to the beginning of its fiscal year or on such other date as the authority may approve upon the request of the assisted city, prepare and submit its proposed five-year plan. At the same time the plan is submitted, the mayor or chief executive officer shall also submit to the authority:

(1) the mayor's or chief executive officer's proposed annual operating budget and capital budget which shall be consistent with the first year of the financial plan and which shall be prepared in accordance with the assisted city's home rule charter or other optional plan of government; and

(2) a statement by the mayor or chief executive officer that such budget:

(i) is consistent with the financial plan;

(ii) contains funding adequate for debt service payments, legally mandated services and lease payments securing bonds of other government agencies; and

(iii) is based upon reasonable and appropriate assumptions and methods of estimation.

(f) Authority review and approval of plan.—

(1) The authority shall promptly review each financial plan, proposed operating budget and capital budget submitted by the assisted city. In conducting such review, the authority shall request from the city controller of the assisted city an opinion or certification prepared in accordance with generally accepted auditing standards, with respect to the reasonableness of the assumptions and estimates in the financial plan. The city controller and other elected officials shall comply with any such request from the authority. Not more than 30 days after submission of a financial plan and proposed operating budget, the authority shall determine whether:

(i) the financial plan projects balanced budgets, based upon reasonable assumptions as described in this section, for each year of the plan; and

(ii) the proposed operating budget and capital budget are consistent with the proposed financial plan.

If the authority determines that these criteria are satisfied, the authority shall approve such financial plan by a qualified majority vote.

(2) The authority shall not be bound by any opinions or certifications of the city controller of the assisted city issued pursuant to this subsection.

(3) If the authority fails to take any action within 30 days on a financial plan, the financial plan as submitted shall be deemed approved. However, if during the 30 days a written request by two members of the authority board for a meeting and vote on the question of approval of the financial plan has been submitted to the chairperson and a meeting and vote does not take place, the financial plan shall be deemed disapproved.

(g) Authority disapproval of plan.—

(1) If the authority disapproves the proposed financial plan, the authority shall, when it notifies an assisted city of its decision, state in writing in reasonable detail the reasons for such disapproval, including the amount of any estimated budget imbalance.

(2) The assisted city shall submit a revised financial plan to the authority within 15 days of such disapproval, which revised plan eliminates the budget imbalance. Not more than 15 days after the submission of such revised financial plan, the authority shall determine whether the revised plan satisfies the criteria set forth in subsection (f)(1). If the authority determines that these criteria are satisfied, the authority shall approve such financial plan by a qualified majority vote. If the authority shall not so approve the financial plan, then the authority shall, subject to the occurrence of the events described in section 210(e), certify the assisted city's noncompliance with the financial plan to the Secretary of the Budget.

(h) Revisions to plan.—

(1) While any bonds of the authority remain outstanding, the plan shall be revised on an annual basis to include the operating budget for the next fiscal year and to extend the plan for an additional fiscal year. In addition, the mayor or chief executive officer of an assisted city shall, within 90 days of assuming office, propose revisions to the financial plan or certify to the authority that he or she adopts the existing plan. A city may, during the course of a fiscal year, submit proposed revisions to the financial plan and shall submit a proposed revision for any amendment to the city's operating or capital budget.

(2) The authority shall review each proposed revision within 20 days of its submission. The authority shall approve the revision if it will not, based on reasonable assumptions, cause the plan to become imbalanced. Proposed revisions shall become part of the financial plan upon the approval of a qualified majority of the authority board, unless some other method of approval is permitted by authority rules and regulations approved by a qualified majority or pursuant to an agreement with the city contained in an intergovernmental cooperation agreement. If the authority fails to take action within 20 days on a proposed revision, such submission shall be deemed approved unless a written request for a meeting and vote has been made in accordance with subsection (f)(3) in which event, if a meeting and vote does not take place, the proposed revision shall be deemed disapproved.

(3) If the governing body of an assisted city adopts a budget inconsistent with an approved financial plan, that city shall submit the enacted budget to the authority as a proposed revision to the plan. The authority shall review the proposed revision within 30 days of its submission, in accordance with the criteria set forth in subsection (f) and the approval process set forth in paragraph (2).

(i) Supplemental reports.—Within 45 days of the end of each fiscal quarter, or monthly if a variation from the financial plan has been determined in accordance with section 210(c), the mayor or chief executive officer of an assisted city shall provide the authority with reports describing actual or current estimates of revenues and expenditures compared to budgeted revenues and expenditures for such period reflected in its cash flow forecast. Each report required under this section shall indicate any variance between actual or current estimates and budgeted revenues, expenditures and cash for the period covered by such report. An assisted city shall also provide periodic reports on debt service requirements in conformity with section 210(b).

(j) Effect of plan upon contracts and collective bargaining agreements.—

(1) A contract or collective bargaining agreement in existence in an assisted city prior to the approval by the authority of a financial plan submitted pursuant to this section shall remain effective after approval of such plan until such contract or agreement expires.

(2) After the approval by the authority of a financial plan submitted pursuant to this section, an assisted city shall execute contracts and collective bargaining agreements in compliance with such plan. If a city executes a contract or a collective bargaining agreement which is not in compliance with the plan, the contract or agreement shall not be void or voidable solely by reason of such noncompliance, but the city shall submit to the authority a proposed revision to the plan which demonstrates that revenues sufficient to pay the costs of the contract or collective bargaining agreement will be available in the affected fiscal years of the plan.

(k) Effect of plan upon certain arbitration awards.—

(1) After the approval by the authority of a financial plan submitted pursuant to this section, any determination of a board of arbitration established pursuant to the provisions of the act of June 24, 1968 (P.L.237, No.111), referred to as the Policemen and Firemen Collective Bargaining Act, providing for an increase in wages or fringe benefits of any employee of an assisted city under the plan, in addition to considering any standard or factor required to be considered by applicable law, shall take into consideration and accord substantial weight to:

(i) the approved financial plan; and

(ii) the financial ability of the assisted city to pay the cost of such increase in wages or fringe benefits without adversely affecting levels of service.

(2) Such determination shall be in writing, and a copy thereof shall be forwarded to each party to the dispute and the authority. Any determination of the board of arbitration which provides for an increase in wages or fringe benefits of any employee of an assisted city shall state with spe-

cificity in writing all factors which the board of arbitration took into account in considering and giving substantial weight to:

- (i) the approved financial plan of the assisted city; and
- (ii) the assisted city's financial ability to pay the cost of such increase.

(3) (i) Any party to a proceeding before a board of arbitration may appeal to the court of common pleas to review:

- (A) the consideration of the assisted city's financial plan;
- (B) the determination as to the assisted city's financial ability to pay; or

(C) the failure of the board of arbitration to issue a determination, including a detailed writing of all factors which the board of arbitration took into account in considering and giving substantial weight to the assisted city's financial ability to pay and the assisted city's financial plan.

(ii) The decision of the board of arbitration shall be vacated and remanded to the board of arbitration if the court finds:

(A) that the board of arbitration failed to take into consideration and accord substantial weight to the approved financial plan;

(B) that the board of arbitration's determination as to the assisted city's financial ability to pay is not supported by substantial evidence as produced by the parties to the proceedings before the board of arbitration; or

(C) that the board of arbitration has failed to state with specificity in writing the factors which it took into account in considering and giving substantial weight to the assisted city's financial ability to pay or the assisted city's approved financial plan.

(iii) Such appeal shall be commenced not later than 30 days after the issuance of a final determination by the board of arbitration.

(iv) If, after the exhaustion of all appeals, the final arbitration award is not in compliance with the approved financial plan, the award shall not be void or voidable solely by reason of such noncompliance, but the assisted city shall submit to the authority a proposed revision to the plan which demonstrates that revenues sufficient to pay the costs of the award will be available in the affected fiscal years of the plan.

Section 210. Powers and duties of authority with respect to financial plans.

(a) Formulation and approval of plan.—To enhance the security of bonds issued by the authority, to minimize the need for future borrowing by the authority and to advance the financial recovery of each assisted city, the authority shall require such city to submit a five-year financial plan in accordance with section 209. With regard to the formulation of such plan, the authority shall:

(1) Consult with an assisted city as it prepares the financial plan.

(2) Prescribe the form of the financial plan, insofar as that form is consistent with an assisted city's home rule charter or other optional plan of government and with this act.

(3) Prescribe the supporting information required in connection with such plan, such information to include at a minimum:

(i) debt service payments due or projected to be due during the relevant fiscal years;

(ii) payments for legally mandated services included in the plan and due or projected to be due during the relevant fiscal years; and

(iii) a statement in reasonable detail of the significant assumptions and methods of estimation used in arriving at the projections in the plan.

(4) Exercise any rights of approval or disapproval and issue such recommendations as are authorized by this act in accordance with the standards for formulation of the plan set forth in section 209(c).

(b) Authority functions after plan is approved.—After a financial plan has been approved, the authority shall:

(1) Receive and review:

(i) the financial reports submitted by the mayor or chief executive officer of an assisted city under section 209(j);

(ii) reports concerning the debt service requirements on all bonds, notes of such city and lease payments of such city securing bonds or other government agencies for the following quarter, which reports shall be in such form and contain such information as the authority shall determine, and which shall be issued no later than 60 days prior to the beginning of the quarter to which they pertain, and shall be updated immediately upon each issuance of bonds or notes, by the assisted city or execution of a lease securing bonds of another government agency, after the date of such report to reflect any change in debt service requirements as a result of such issuance; and

(iii) any additional information provided by the assisted city concerning changed conditions or unexpected events which may affect the city's adherence to the financial plan. The reports described in subparagraph (ii) shall be certified by the city controller.

(2) Determine, on the basis of information and reports described in paragraph (1), whether an assisted city has adhered to the financial plan.

(c) Variation from the plan.—If the authority determines, based upon reports submitted by an assisted city under subsection (b) or independent audits, examinations or studies of the assisted city's finances obtained under subsection (i)(4), that an assisted city's actual revenues and expenditures vary from those estimated in the financial plan, the authority shall require the city to provide such additional information as the authority deems necessary to explain the variation. The authority shall take no action with respect to an assisted city for departures from the financial plan in a fiscal quarter if:

(1) the city provides a written explanation for the variation that the authority deems reasonable;

(2) the city proposes remedial action which the authority believes will restore the city's overall compliance with the financial plan;

(3) information provided by the city in the immediately succeeding quarterly financial report demonstrates that the city is taking such remedial action and otherwise complying with the plan; and

(4) the city submits monthly supplemental reports in accordance with section 209(i) until it regains compliance with the financial plan.

(d) Authority may make recommendations.—The authority may at any time issue recommendations as to how an assisted city may achieve compliance with the financial plan and shall provide copies of such recommendations to the mayor or chief executive officer and the governing body of the city and to the officials named in section 203(b)(5).

(e) When Commonwealth shall withhold funds.—

(1) The authority shall certify to the Secretary of the Budget an assisted city's noncompliance with the financial plan during any period when the authority has determined by the vote of a qualified majority that the city has not adhered to the plan and has not taken acceptable remedial action during the next quarter following such departure from the plan.

(2) The authority shall certify to the Secretary of the Budget that an assisted city is not in compliance with the plan if the city:

(i) has no financial plan approved by the authority, or has failed to file a financial plan with the authority; or

(ii) has failed to file mandatory revisions to the plan or reports as required by section 209(h), (i), (j) or (k); and

(iii) has not been compelled to file a financial plan, a mandatory revision to the plan or a report through a mandamus action authorized under subsection (j).

(3) If the authority certifies that an assisted city is not in compliance with the financial plan under paragraph (1) or (2), the Secretary of the Budget shall notify the city that such certification has been made and that each grant, loan, entitlement or payment to the assisted city by the Commonwealth, or any of its agencies, including payment from the city account established pursuant to section 314, shall be suspended pending compliance with the financial plan. Funds withheld shall be held in escrow by the Commonwealth or, in the case of the city account, be retained in that city account until compliance with the plan is restored as set forth in paragraph (4). Funds held in escrow pursuant to this subsection shall not lapse pursuant to section 621 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, or any other law.

(4) The authority shall, by qualified majority vote, determine when the conditions which caused an assisted city to be certified as not in compliance with the financial plan have ceased to exist and shall promptly notify the Secretary of the Budget of such vote. The Secretary of the Budget shall thereupon release all funds held in escrow, together with all interest and income earned thereon during the period held in escrow, and the disbursements of amounts in the city account shall resume as provided in section 314(c).

(f) Exemptions.—Notwithstanding the provisions of subsection (e), the following shall not be withheld from an assisted city:

(1) funds for capital projects under contract in progress;

(2) funds granted or allocated to an assisted city directly from an agency of the Commonwealth or from the Federal Government for distri-

bution by the Commonwealth after the declaration of a disaster resulting from a catastrophe;

(3) pension fund payments required by law;

(4) funds administered by the assisted city's department of human services or department of health that provide benefits or service to recipients;

(5) funds that the assisted city has pledged to repay bonds or notes issued under the act of October 18, 1972 (P.L.955, No.234), known as The First Class City Revenue Bond Act; and

(6) funds appropriated by the Commonwealth for the court system or correctional programs of the assisted city.

(g) Effect of Commonwealth's failure to disburse funds.—The provisions of subsection (e) also shall not apply and an assisted city shall not be found to have departed from the financial plan due to the Commonwealth's failure to pay any money, including payment of Federal funds distributed by or through the Commonwealth, due to the city from moneys appropriated by the General Assembly.

(h) Assisted city to determine expenditure of available funds.—Nothing in this act shall be construed to limit the power of an assisted city to determine, from time to time, within available funds of the assisted city, the purposes for which expenditures are to be made by the assisted city and the amounts of such expenditures then permitted under the financial plan of the assisted city.

(i) Documents and examinations to be reviewed or undertaken by the authority.—The authority shall:

(1) receive from an assisted city, and review, the reports, documents, budgetary and financial planning data and other information prepared by or on behalf of such assisted city and which are to be made available to the authority under this act;

(2) receive from a corporate entity or school district, and review, the reports, documents, budgetary and financial planning data and other information prepared by or on behalf of a corporate entity or school district and which are to be made available to the authority under this act as the authority deems necessary to accomplish the purposes of this act;

(3) inspect and copy such books, records and information of an assisted city, corporate entity or school district as the authority deems necessary to accomplish the purposes of this act; and

(4) conduct or cause to be conducted such independent audits, examinations or studies of a school district or assisted city's finances as the authority deems appropriate.

(5) conduct or cause to be conducted such independent audits, examinations or studies of a corporate entity's finances as the authority by a qualified majority of the board deems appropriate.

(j) Remedies of authority for failure of an assisted city to file financial plans and reports.—In the event that an assisted city shall fail to file with the authority any financial plan, revision to a financial plan, report or other information required to be filed with the authority pursuant to this act, the authority, in addition to all other rights which the authority may have at law

or in equity, shall have the right by mandamus to compel the assisted city and the officers, employees and agents thereof to file with the authority the financial plan, revision to a financial plan, report or other information which the assisted city has failed to file. The authority shall give the assisted city written notice of the failure of the assisted city to file and of the authority's intention to initiate an action under this subsection and shall not initiate such an action earlier than ten days after the giving of such notice.

Section 211. Limitation on authority and on assisted cities to file petition for relief under Federal bankruptcy law.

(a) Limitation on bankruptcy filing.—Notwithstanding any other provision of law, so long as the authority shall have outstanding any bonds issued pursuant to this act, the authority and any assisted city shall not be authorized to file a petition for relief under 11 U.S.C. Ch. 9 (relating to bankruptcy) or any successor Federal bankruptcy law, and no government agency shall authorize the authority or such city to become a debtor under 11 U.S.C. Ch. 9 or any successor Federal bankruptcy law.

(b) Bankruptcy filing approval.—In addition to the limitation set forth in subsection (a), and notwithstanding any other provision of law, no city of the first class shall be authorized to file a petition for relief under 11 U.S.C. Ch. 9 or any successor Federal bankruptcy law, unless such petition has first been submitted to, and the filing thereof has been first approved in writing by the Governor. The Governor is hereby designated, in accordance with 11 U.S.C. § 109(c)(2) (relating to the debtor status of a municipality), as the organization of the Commonwealth which shall have power to approve or disapprove the filing of any such petition of a political subdivision, and to approve or disapprove any plan of readjustment of the debts of any such political subdivision prepared, filed and submitted with the petition to the court, as provided under 11 U.S.C. Ch. 9.

(c) Review of bankruptcy petition.—

(1) When any such petition shall be submitted to the Governor for approval, accompanied with a proposed plan of readjustment of the debts of a city, the Governor shall make a careful and thorough investigation of the financial condition of such city, of its assets and liabilities, of its sinking fund, and whether the affairs thereof are managed in a careful, prudent and economic manner in order to ascertain whether the presentation of such petition is justified, or represents an unjust attempt by such city to evade payment of some of its contractual obligations, and, if the Governor believes that such petition should be approved, whether the plan of readjustment submitted will be helpful to the financial condition of the city and is feasible and, at the same time, fair and equitable to all creditors.

(2) The Governor shall also, prior to giving his¹ approval, ascertain the amount, if any, of the obligations of any such petitioning city which is held by any agency or agencies of the State government as trust funds and shall, before approving any such petition and plan of readjustment, consult with and give every such agency an opportunity to be heard and the privilege to examine the findings of the Governor resulting from the

¹ "its" in enrolled bill.

investigation hereinbefore required to be made, and shall likewise hear any other creditor of such city, whether resident in or outside of this Commonwealth, who shall apply therefor.

(3) The Governor, if he¹ approves a petition, shall, before giving his² approval, require such modification in the proposed plan for readjusting the debts as to him¹ appears proper.

(d) Effective date.—Subsections (b) and (c) shall take effect on the effective date of this act and shall apply to an assisted city whenever the authority does not have any outstanding bonds issued pursuant to this act.

Section 212. Sovereign immunity.

Members of the board shall not be liable personally on any obligations of the authority, including, without limitation, bonds of the authority. 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).

CHAPTER 3 BONDS AND FUNDS OF AUTHORITY

Section 301. Bonds.

(a) Authorization.—The bonds of the authority shall be authorized by resolution of the board by vote of a qualified majority and shall be of such series, bear such date or dates, bear or accrue interest at such rate or rates as shall be determined by the board as necessary to issue and sell the authorized bonds, be in such denominations, be in such form, either coupon or fully registered without coupons or in certificated or book-entry-only form, carry such registration, exchangeability and interchangeability privileges, be payable in such medium of payment and at such place or places, be subject to such terms of redemption and be entitled to such priorities of payment in the revenues or receipts of the authority as such resolution or resolutions of the board may provide. The bonds shall be signed by or shall bear the facsimile signatures of such officers as the board 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 thereof, shall have ceased to be such officer or officers at the time when such bonds shall actually be delivered.

(b) Maturity date.—

(1) Bonds issued to finance a deficit other than a cash flow deficit or to provide other financial assistance to an assisted city shall mature at such time or times not exceeding ten years from their respective dates of original issue as the authority shall by resolution determine.

¹ “it” in enrolled bill.

² “its” in enrolled bill.

(2) Bonds issued to finance the costs of capital projects shall mature at such time or times not exceeding the weighted average useful life of the projects being financed and in no event exceeding 30 years from their respective dates of original issue as the authority shall by resolution determine.

(3) Bonds issued in anticipation of income of the authority or to finance a cash flow deficit of a city shall mature within the fiscal year of the date of issuance thereof, except for bonds issued in anticipation of grants from the Commonwealth, a government agency or Federal agency, which bonds shall mature no later than the time of anticipated receipt of such grant.

(4) Bonds issued to purchase obligations of a city shall mature not more than 30 days after the maturity of the obligations purchased.

(c) Sale.—Bonds may be sold at public sale or invited sale for such price or prices and at such rate or rates of interest as the authority shall determine. Bonds may be sold at private sale by negotiation at such price or prices and at such rate or rates of interest as the authority shall determine, but only if the authority makes a written public explanation of the circumstances and justification for the private sale by negotiation. Pending the preparation of the definitive bonds, interim receipts may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

(d) Negotiable instruments.—Bonds of an authority shall have the qualities of negotiable instruments under 13 Pa.C.S. (relating to commercial code).

(e) Use of proceeds.—The proceeds of an issue of bonds may be used to pay the costs of issuance of such bonds, to pay costs of administration of authority assistance to a city, to fund reserves for such bonds, to capitalize interest on such bonds for a period not to exceed 12 months, to fund an existing or projected deficit of a city or to provide for other financial assistance to a city, to finance any cash flow deficit of a city or of the authority or to purchase any obligations of a city issued to finance cash flow deficits or to pay the costs of capital projects; provided that the authority shall not issue bonds to finance the costs of a capital project in and for an assisted city unless it receives the request described in subsection (g) accompanied by a certification that the assisted city cannot obtain financing for such capital projects at reasonable rates except through the issuance of authority bonds and that the construction or acquisition of such capital projects is a material element of such city's approved financial plan and the authority determines by a qualified majority of the board that the capital project¹ is:

(1) an emergency capital project which must necessarily be undertaken as a direct result of an order by a court of competent jurisdiction or for the repair or replacement of an existing facility that had been placed in service prior to the effective date of this act and is owned or occupied by a city on the effective date of this act; or

(2) a capital project necessary to achieve savings and balanced budgets under an approved financial plan.

¹ "that the capital project" omitted in enrolled bill.

In addition to the requirement of a qualified majority of the board, the Governor and either the Auditor General or State Treasurer shall certify that a capital project under paragraph (2) is a capital project necessary to achieve savings and balanced budgets under an approved financial plan of an assisted city. Proceeds of the initial bond issue of the authority may be applied to reimburse the Commonwealth for the advance set forth in section 701 and to fund up to \$500,000 of initial operating expenses of the authority.

(f) Refunding.—Subject to the provisions of the outstanding bonds, notes or other obligations issued under this or other acts and subject to the provisions of this act, the authority shall have the right and power to refund any outstanding debt of the authority or a city, whether such debt represents principal or interest, in whole or in part, at any time. The term “refund” and 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. The term of any bonds issued for refunding purposes shall not extend to a maturity date which could not have been included in the original issue of bonds being refunded.

(g) City request prerequisite.—The authority shall not issue any bonds except bonds to refund its bonds, unless it has received a request from a city for such issuance executed by the mayor or chief executive officer of such city and approved by the governing body of such city by resolution.

Section 302. Exemption from taxation.

The effectuation of the authorized purposes of the authority 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 improvements of their health, safety, welfare and living conditions; and, since the authority will, as a public instrumentality of the Commonwealth, be performing essential governmental functions in effectuating such purposes, the authority shall not be required to pay any taxes or assessments upon any property acquired or used or permitted to be used by the authority for such purposes; and the bonds issued by the authority, their transfer and the income therefrom, including any profits made on the sale thereof, shall, at all times, be free from State and local taxation within this Commonwealth. This exemption shall not extend to gift, estate, succession or inheritance taxes or any other taxes not levied directly on the bonds, the transfer thereof, the income therefrom or the realization of profits on the sale thereof.

Section 303. Validity of bonds; limitation on actions.

(a) Presumption.—Any bond reciting in substance that it has been issued by the authority to accomplish the public purposes of this act shall be conclusively deemed in any suit, action or proceeding involving the validity or enforceability of such bonds or security therefor to have been issued for such purposes.

(b) Filing.—The authority may cause a copy of any resolution authorizing the issuance of bonds adopted by it to be filed for public inspection in its office and in the office of the clerk of the governing body of the city to be assisted and may thereupon cause to be published in a newspaper of general circulation published or circulating in the city a notice stating:

- (1) The fact and date of such adoption.
- (2) The places where such resolution has been so filed for public inspection.
- (3) The date of publication of such notice.
- (4) That any action or proceeding of any kind or nature in any court questioning the validity or proper authorization of bonds provided for by the resolution, or the validity of any covenants, agreements or contract provided for by such resolution, shall be commenced *within 10 days* after the publication of such notice.

If any such notice shall at any time be published and if no action or proceeding questioning the validity or proper authorization of bonds provided for by the resolution referred to in such notice, or the validity of any covenants, agreements or contract provided by such resolution, shall be commenced within 10 days after the publication of such notice, then all residents, taxpayers and owners of property in the city and all other persons whatsoever shall be forever barred and foreclosed from instituting or commencing any action or proceeding in any court, or pleading any defense to any action or proceedings, questioning the validity or proper authorization of such bonds, or the validity of any such covenants, agreements or contracts, and said bonds, covenants, agreements and contracts shall be conclusively deemed to be valid and binding obligations in accordance with their terms and tenor.

(c) Estoppel.—After issuance of bonds, all such bonds shall be conclusively presumed to be fully authorized and issued by all the laws of this Commonwealth, and any person shall be estopped from questioning their sale, execution or delivery by the authority.

Section 304. Provisions of bonds; trust indentures.

In connection with the issuance of bonds and in order to secure the payment of such bonds, the authority, in addition to its other powers, shall have the power to:

- (1) pledge or grant a security interest in all or any part of its gross or net revenues, including the proceeds of any tax levied for the purposes of or made available for use by the authority, to which its right then exists or which may thereafter come into existence;
- (2) grant a security interest in all or any part of its personal property then owned or thereafter acquired;
- (3) covenant against pledging or granting a security interest in all or any part of its revenues or all or any part of its personal property to which its right or title exists or may thereafter come into existence, or against permitting or suffering any lien on such revenues or property; covenant with respect to limitations on its right to sell, lease or otherwise dispose of any of its real property; and covenant as to which other or additional debts or obligations may be incurred by it;
- (4) covenant as to the bonds to be issued and as to the issuance of such bonds, in escrow or otherwise, and as to the use and disposition of the proceeds thereof; provide for the replacement of lost, destroyed or mutilated bonds; covenant against extending the time for the payment of bonds or interest thereon; redeem the bonds, and covenant for their redemption and provide the terms and conditions thereof;

(5) covenant as to the amount of revenues to be received in each fiscal year or other period of time by the authority, as well as to the use and disposition to be made thereof, create or authorize the creation of special funds or reserves for debt service or other purposes and covenant as to the use and disposition of the moneys held in such funds;

(6) prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, and the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(7) covenant as to the use of any or all of its real or personal property, to warrant its title, and covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance proceeds;

(8) covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation, provided that the authority shall not be permitted to covenant that upon such breach any or all of its bonds shall become or may be declared due before stated maturity;

(9) vest in a trustee or the holders of bonds, or any proportion of them, the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; vest in a trustee the right, in the event of default in payments of interest or on principal of bonds by the authority, to take possession and use, operate and manage any real or personal property and to collect the revenues and receipts of an authority and to dispose of such moneys in accordance with the agreement of the authority with the trustee; provide for the powers and duties of a trustee and to limit liabilities thereof; and provide the terms and conditions upon which a trustee or the holders of bonds, or any proportion of them, may enforce any covenant or rights securing or relating to the bonds;

(10) enter into interest rate exchange agreements, interest rate cap and floor agreements and other similar agreements which in the judgment of the authority will assist the authority in managing the interest costs of the authority;

(11) obtain letters of credit, bonds insurance and other facilities for credit enhancement and liquidity; and

(12) exercise all or any part or combination of the powers granted in this act, make covenants other than and in addition to the covenants expressly authorized by this act, make such covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or, in the absolute discretion of the authority, as will tend to accomplish the purposes of this act, by making the bonds more marketable notwithstanding that such covenants, acts or things may not be specifically enumerated by this act.

Notwithstanding any provision of this act to the contrary, the real property of the authority shall not be mortgaged and shall not be subject to attachment nor levied upon by execution or otherwise. The revenues of the authority and the personal property of the authority shall be pledged or otherwise

encumbered only as expressly provided in this section and, except to the extent necessary to effectuate such pledge or encumbrance, shall not be subject to attachment nor levied upon by execution or otherwise.

Section 305. Remedies of obligee of authority.

An obligee of the authority shall have the right, in addition to all other rights which may be conferred on such obligees subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action or proceeding at law or in equity, to compel the authority and the members of its governing board, 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) By proceeding in equity, to obtain an injunction against any acts or things which may be unlawful or the violation of any of the rights of such obligee of the authority.

(3) To require the authority to account as if it were the trustee of an express trust for the obligees of the authority for any pledged revenues received.

Section 306. Validity of pledge.

Any pledge of or grant of a security interest in revenues of the authority or personal property of an authority made by the authority shall be valid and binding from the time when the pledge is made; the revenues or other property so pledged and thereafter received by the authority shall immediately be subject to the lien of any such pledge or security interest without any physical delivery thereof or further act, and the lien of any such pledge or security interest shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument of the authority by which a pledge or security interest is created need be recorded or filed to perfect such pledge or security interest.

Section 307. Commonwealth pledges.

(a) Bondholders.—The Commonwealth does hereby pledge to and agree with each and every obligee of the authority that the Commonwealth will not limit or alter the rights hereby vested in the authority in any manner inconsistent with the obligations of the authority to such obligees until all bonds at any time issued, together with the interest thereon, are fully paid and discharged. The Commonwealth does further pledge to and agree with any Federal agency that, in the event that any Federal agency shall contribute any funds to the authority for assistance to a city pursuant to this act, the¹ Commonwealth will not alter or limit the rights and powers of the authority in any manner which would be inconsistent with the due performance of any agreements between the authority, the city and any such Federal agency.

(b) Lessees.—The Commonwealth does hereby pledge to and agree with any person who, as owner thereof, leases or subleases property to or from the authority, that the Commonwealth will not limit or alter the rights and

¹ “, that the” in enrolled bill.

powers hereby vested in the authority or otherwise created by this act in any manner which impairs the obligations of the authority until all such obligations of the authority under such lease or sublease are fully met and discharged.

(c) Reduction of pledged tax revenues.—If and to the extent that the authority pledges any proceeds of a tax authorized by law to be levied for the authority purposes or made available for use by the authority as security for bonds of the authority, or the city pledges any proceeds of a tax as security for payment by such city to the authority, the Commonwealth does hereby pledge to and agree with each and every obligee of the authority acquiring bonds so secured to be issued by the authority that the Commonwealth itself will not, nor will it authorize any government agency levying such tax to, reduce the rate of tax imposed for such authority or city purposes, or made available for use by the authority, until all bonds so secured by the pledge of the authority, together with the interest thereon, are fully paid or provided for or¹ until all payments to the authority so secured by the pledge of the city have been made or provided for.

Section 308. Resolution and law are contracts with holders of bonds.

Except as otherwise provided in any resolution of the authority authorizing or awarding bonds, the terms of such resolution and any agreement authorized by such resolution and the terms of this act as in effect when such bonds were authorized shall constitute a contract between the authority and the obligees from time to time of the authority, subject to modification by the vote by holders of such percentage of bonds as the resolution authorizing or awarding such bonds shall provide.

Section 309. Bonds to be legal investments.

Bonds issued pursuant to this act are hereby made securities in which all government agencies, all insurance companies, trust companies, banking associations, banking corporations, savings banks, investment companies, executors, the trustees of any retirement, pension or annuity fund or system of the Commonwealth or of a city, trustees and other fiduciaries may properly and legally invest funds, including capital, deposits or other funds in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any government agency for any purpose for which the deposit of bonds or other obligations of the Commonwealth now or may hereafter be authorized by law.

Section 310. Right to enforcement of pledge of revenues.

The obligees of the authority shall have the right to enforce a pledge of or security interest in revenues of the authority securing payment of bonds of the authority against all government agencies in possession of any such revenues at any time, which revenues may be collected directly from such officials upon notice by such obligees or a trustee for such obligees for application to the payment of such bonds as and when due or for deposits in any sinking, bond or debt service fund established by this act or established by resolution of the authority with such trustee at the times and in the amounts specified in such bonds or the resolution or indenture or trust agreement securing such bonds. Any government agency in possession of any such reve-

¹ "or" omitted in enrolled bill.

nues shall make payment against receipt and shall thereby be discharged from any further liability or responsibility for such revenues. If such payment shall be to a holder of bonds, it shall be made against surrender of such bonds to the payor for delivery to the authority in the case of payment in full; otherwise, it shall be made against production of such bonds for notation thereon of the amount of the payment. The provisions of this section with respect to the enforceability and collection of revenues which secure bonds shall supersede any contrary or inconsistent statutory provision or rule of law. This section shall be construed and applied to fulfill the legislative purpose of clarifying and facilitating the financing of the authority of the costs of assisting a city by assuring to the obligees of the authority the full and immediate benefit of the security for the bonds without delay, diminution or interference based on any statute, decision, ordinance or administrative rule or practice.

Section 311. Funds of authority; sources of revenue.

(a) Receipt by treasurer.—All funds of the authority received from any source shall be delivered to or upon the order of the treasurer of the authority or to such other agent of the authority as the board may designate. Such funds received by the authority shall be promptly deposited in a bank or banks in this Commonwealth as chosen by a qualified majority of the board. The moneys in such account or accounts may be paid by the treasurer of the authority or other designated agent of the authority on warrant of the treasurer of the authority or by such persons as the board may authorize to make such warrants. All such deposits of moneys may, if required by the authority, be secured by obligations of the United States or of the Commonwealth of a market value equal at all times to the amount of the deposit, and all banks and trust companies are authorized to give such security for such deposits, provided that no moneys deposited in a debt service reserve fund may be secured by a deposit of obligations issued by or obligations guaranteed by an assisted city.

(b) Investment of funds.—Subject to the provisions of any agreements with obligees of the authority, all funds of the authority, including the proceeds of bonds, which are not required for immediate use may be invested in obligations of an assisted city or in obligations of the Federal Government or of the Commonwealth or obligations which are legal investments for Commonwealth funds. However, no moneys may be invested in obligations issued by or obligations guaranteed by an assisted city without the approval of a qualified majority of the board, and, in any case, no moneys held in a debt service reserve fund may be invested in obligations issued by or obligations guaranteed by an assisted city.

(c) Pledges from city.—To further secure repayment of obligations of an assisted city to the authority, such city is authorized to pledge or direct, and the authority is authorized to receive directly from the collector of such taxes or revenues, city taxes and other revenues otherwise payable to the city and so directed or pledged.

Section 312. Payment of proceeds of tax levied for authority purposes.

The proceeds of any tax levied for authority purposes or made available for use by the authority which tax proceeds shall have been pledged by the authority to secure its bonds, and collected by the Department of Revenue, shall be transferred by the State Treasurer at the times provided by law to the bond payment account established pursuant to section 314, to¹ a debt service reserve fund established under the authority of section 313, to the authority for payment of operating expenses in the amount permitted pursuant to section 206 and then to the city account established pursuant to section 314, all in the manner provided in this act, subject to any limitations set forth in the resolution of the authority authorizing such bonds.

Section 313. Debt service reserve fund.

(a) Authorization.—The authority may establish one or more debt service reserve funds into which it shall deposit:

(1) The proceeds of any tax levied for authority purposes or made available for use by the authority in excess of amounts required to be deposited in the bond payment account pursuant to section 314.

(2) Proceeds from the sale of bonds, to the extent provided in the resolution or resolutions authorizing such bonds.

(3) Any other moneys made available to the authority from any source for such purpose.

All moneys held in any debt service reserve fund, except as provided hereafter, shall be used when required solely for the payment of the principal of bonds secured in whole or in part by such fund or of the sinking fund payments, if any, with respect to such bonds, the purchase or redemption of such bonds, the payment of interest on such bonds or the payment of any redemption premium required to be paid when such bonds and notes are redeemed prior to maturity. Any debt service reserve fund established pursuant to this section shall be a trust fund held for the benefit and security of the obligees of the authority whose bonds are secured by such fund. Moneys in a debt service reserve fund shall not be withdrawn from the fund at any time in an amount that would reduce the amount of the fund to less than the minimum reserve fund requirement established for such fund in the resolution of the authority creating such fund, except for withdrawals for the purpose of making payments when due of principal, interest, redemption premiums and sinking fund payments, if any, with respect to such bonds for the payment of which other moneys of the authority are not available. Any income or interest earned by, or increments to, any debt service reserve fund due to the investment thereof may be transferred by the authority to other funds or accounts of the authority to the extent such transfer does not reduce the amount of the debt service reserve fund below the minimum reserve fund requirement established for such fund. Funds transferred to other accounts in accordance with the preceding requirements may be used for whatever purposes the authority deems appropriate so long as such purposes are consistent with this act and the contracts of the authority with obligees of the authority and with assisted cities.

¹ “to” omitted in enrolled bill.

(b) **Bond limitation.**—The authority shall not at any time issue bonds secured in whole or in part by a debt service reserve fund if issuance of such bonds would cause the amount in the debt reserve fund to fall below the minimum reserve requirement for such fund, unless the authority at the time of issuance of such bonds shall deposit in the fund an amount, from the proceeds of the bonds to be issued or from other sources, which when added to the amount already in such fund will cause the total amount on deposit in such fund to equal or exceed the minimum reserve fund requirement. For the purposes of this section, the term “minimum reserve fund requirement” shall mean that amount defined as the minimum reserve fund requirement in the resolution or resolutions of the authority authorizing the bonds.

Section 314. Bond payment account and city account.

(a) **Payment of certain tax revenue.**—When bonds or payments due to the authority from a city are secured by and payable from a tax or taxes levied for authority purposes or made available for use by the authority or levied by the assisted city, which tax has been pledged by the authority to secure payment of such bonds or by the assisted city to secure payments due to the authority, the proceeds of such taxes shall be paid by the collector or receiver of such taxes directly to the bond payment account, any debt service reserve fund established pursuant to section 313, and the city account of the authority which are hereby directed to be established by the authority as trust funds with a bank with trust powers or a trust company with a place of business in the Commonwealth selected by the authority. Any payments of authority operating expenses in amounts permitted pursuant to section 206 shall be paid to or on the order of the authority after required payments to the bond payment account and any debt service reserve fund and before any payments to the city account. Such payments of authority operating expenses shall be no more frequent than monthly and shall be subject to any further limitation set forth in any agreement of the authority with the obligees of the authority.

(b) **Bond payment account as trust fund.**—The bond payment account shall be a trust fund held for the exclusive and equal and ratable benefit of the holders of the bonds of the authority secured by and payable from the proceeds of any tax pledged by the authority or secured by the payments due to the authority from the city as described in subsection (a). The authority shall establish a payment schedule for the deposit of amounts sufficient to accumulate the interest and principal becoming due on such bonds in each fiscal year of the authority, and the first moneys received from such tax or other pledged revenues shall be deposited in the bond payment account until the payment requirement established for the bonds has been met. Any proceeds of such tax or other pledged revenues in excess of the scheduled deposit shall be transferred first to the debt service reserve fund or funds of the authority established under section 313 to cure any deficiency in such fund. Any remaining proceeds shall be paid to the authority in the amount permitted for authority operating expenses pursuant to section 206 and subsection (a), and the excess shall be transferred to the city account. If at any time proceeds of the tax are insufficient to meet the scheduled deposit requirement,

all proceeds of the tax shall be paid into the bond payment account until all deficiencies have been restored. Income on investments of moneys on deposit in the bond payment account shall be retained in such account and applied when earned to reduce future deposit requirements.

(c) Status of city account.—The city account shall be a trust fund held for the exclusive benefit of an assisted city. Any proceeds of the taxes or other revenues pledged to secure the bonds or to secure payments due from the city to the authority in excess of the payment requirements for the bond payment account and in excess of any amount required to cure a deficiency in the debt service reserve fund or funds established pursuant to section 313 and in excess of any amount permitted to be paid to the authority for authority operating expenses pursuant to section 206 and subsection (a) shall be deposited in the city account. Amounts in the city account shall be invested at the direction of an assisted city in investments permitted by this act. Subject to any suspension of disbursements pursuant to section 210(e), amounts in the city account shall be disbursed to an assisted city not less often than monthly for credit to such city's general fund for application to the general expenses of government or for deposit in an operating reserve of such city if such operating reserve is created pursuant to an intergovernmental cooperation agreement.

Section 315. Other funds and accounts.

(a) Authorization.—The authority shall create such other funds and accounts as may be necessary or desirable for its corporate purposes and shall pay into each such fund or account any moneys of the authority available for such purposes or any moneys made available by any other person for the purposes of such fund or account. No other provision of this act shall be construed to prohibit the authority from creating within any fund one or more accounts which may be used or pledged by the authority for a special purpose.

(b) Use of fund money.—Any moneys deposited in any fund created by the authority to be used to pay debt service, including, without limitation, the bond payment account, any sinking fund or debt service reserve fund and all investments and proceeds of investments thereof shall, without further action or filing, be subjected to a perfected security interest for the obligees of the authority for whom such fund is held until such moneys or investments shall be properly disbursed in accordance with this act and with the terms of the contract of the authority with its obligees.

Section 316. Exchange of bonds for obligations of city.

(a) Debt exchange.—The bonds of the authority may be issued in exchange for obligations issued by an assisted city in such manner and from time to time as may be determined by a qualified majority of the board, and the authority may pay all expenses, premiums and commissions incident to such exchange which the authority deems necessary or appropriate.

(b) Limitation.—The authority shall not exchange any of its bonds for obligations of a city unless:

(1) such city shall have entered into an intergovernmental cooperation agreement with the authority; and

(2) the authority shall have determined that the terms of such exchange will not prejudice the rights of holders of other bonds and notes of such city.

(c) Authority action.—Upon receipt of the obligations of the city so exchanged, the authority may hold such obligations and receive all payments of principal and interest thereon, or may deliver all or a portion of such obligations to the city or its fiscal agent for cancellation without receiving payment of principal or interest on such obligations, in which event the city or its fiscal agent shall cancel such obligations and the city shall have no further liability with respect thereto.

Section 317. Initial issue of authority bonds.

(a) Availability of proceeds.—The first series of bonds to be issued by the authority to finance a deficit, other than a cash flow deficit and other than the interim financing arrangement authorized in section 203, shall be issued in such manner and time so that the net proceeds of such bonds shall be available on or before June 30, 1991, or as soon as practicable thereafter, in an amount not less than the amount reasonably estimated by the city requesting the issuance of such bonds, to be its deficit for the fiscal year ending June 30, 1991.

(b) Amendment to city budget.—As of the effective date of this act, such city shall be authorized to amend its budgets for the fiscal years ending June 30, 1991, and June 30, 1992, to adjust appropriations in anticipation of receipt of the proceeds of the first series of bonds to be issued in accordance with subsection (a) and the proceeds of any tax levied pursuant to Chapter 5. The amendments, if any, shall be considered revisions to the city's financial plan and shall be subject to the authority's approval under section 209.

Section 318. Payment of taxes with authority bonds.

If the resolution of the authority authorizing or awarding bonds shall so provide, with the approval of the mayor or chief executive officer of the assisted city, the authority may issue bonds which shall, upon maturity, at the election of the holder thereof if so provided in such bonds, be receivable at full face value and in lieu of cash in payment of any tax which is pledged as security for such bonds or as security for any agreement between the authority and such city securing the bonds, any installment of estimated tax so pledged to secure such bonds or payment or any interest or penalties thereon. Any bonds of the authority so received in payment of any such tax or installment of estimated tax or interest or penalties shall be presented to the authority for tender to the appropriate collector of such taxes.

Section 319. Final date for issuance of bonds.

No bond shall be issued for the purpose of financing a capital project or a deficit, other than a cash flow deficit, on a date later than December 31, 1994. No bond shall be issued for the purpose of financing a cash flow deficit on a date later than December 31, 1996. The limitations provided in this section shall not apply to any bond to be issued to refund an outstanding bond issued under this act.

Section 320. City payment of authority bonds.

An assisted city shall have the right at any time to deposit funds with the authority in an amount sufficient to pay for the defeasance of all or part of the authority's bonds. The assisted city depositing funds with the authority pursuant to this section shall have the right to designate to the authority the maturities of bonds or portions thereof subject to defeasance by such deposit. If an assisted city pays to the authority an amount sufficient to pay for the defeasance of all of the authority's bonds, the assisted city shall be deemed to have no further obligations under this act.

CHAPTER 4
TAX ANTICIPATION NOTES

Section 401. Tax anticipation notes of cities of first class.

Notwithstanding any other provision of law, each city shall have the power and authority, by determination adopted by a majority of the loan committee, to borrow money from time to time in any fiscal year in anticipation of the receipt of current taxes or current revenues, or both, to evidence the obligation by tax anticipation notes, appropriately designated, and to authorize, issue and sell such notes in the manner and subject to the limitations provided in this chapter. Notes issued in anticipation of taxes shall be designated "tax anticipation notes," notes issued in anticipation of other revenues shall be designated "revenue anticipation notes" and notes issued in anticipation of taxes and revenues shall be designated "tax and revenue anticipation notes." Obligations evidenced by tax anticipation notes shall not be deemed to be debt of a city subject to the limitations of Article 9 of the Constitution of Pennsylvania. The power set forth in this article to borrow from time to time shall include, but not be limited to, the power to make a single authorization and then issue and sell portions of such amount of authorized tax anticipation notes whenever desired during the fiscal year. Negotiations for tax anticipation notes may be commenced not more than 30 days prior to the beginning of a fiscal year, but all tax anticipation notes shall be issued and mature within the same fiscal year.

Section 402. Limitation on amount of tax and revenue anticipation notes.

No city shall authorize or issue tax anticipation notes in any one fiscal-year which in the aggregate shall exceed 85% of:

- (1) in the case of notes solely payable from and secured by a pledge of taxes, the amount of such taxes levied for the current fiscal year;
- (2) in the case of notes solely payable from and secured by a pledge of revenues other than tax revenues, the amount of such revenues pledged; or
- (3) in the case of notes payable from and secured by a pledge of taxes and other revenues, the sum of such taxes levied and such revenues pledged;

which, in all cases, are certified, pursuant to section 406, as remaining to be collected or received in such fiscal year during the period when the notes will be outstanding. The certificate shall be as of a date not more than 30 days prior to and no later than the date of the adoption of the determination of the loan committee authorizing the issue and sale of the tax anticipation

notes. In computing the aggregate amount of tax anticipation notes outstanding at any given time during the fiscal year for the purpose of the limitation imposed by this section, allowance shall be made for such notes as have already been fully paid and for amounts already paid into a sinking fund or trust fund established for payment of such notes, if any.

Section 403. Limitation on stated maturity date of tax and revenue anticipation notes; time of payment of interest.

No tax anticipation notes shall be stated to mature beyond the last day of the fiscal year in which such tax anticipation notes are issued. Interest on tax anticipation notes from the date thereof shall be payable at the maturity of such notes or payable in installments at such earlier dates and at such annual rate or rates, fixed or variable, as the loan committee by a majority of its members, may determine.

Section 404. Other terms of tax and revenue anticipation notes.

Tax anticipation notes shall be issued in such denomination, shall be subject to such rights of prior redemption, shall have such privileges of interchange and registration, shall be dated, shall be stated to mature on such dates and in such amounts, shall be in registered or bearer form with or without coupons or¹ in certificated or book-entry-only form, shall be payable in such medium of payment and shall be payable at such place or places, all as the loan committee, by a majority of its members, may determine.

Section 405. Security for tax and revenue anticipation notes; sinking fund or trust fund.

(a) Security.—All tax anticipation notes issued in a single fiscal year shall be equally and ratably secured by the pledge of, security interest in, and a lien and charge on, the taxes or revenues or both of the city specified in the authorizing determination to be collected or received during the period when the notes will be outstanding. Such pledge, lien and charge shall be fully perfected as against the city, all creditors thereof and all third parties in accordance with the terms of such authorizing determination from and after the filing of a financing statement or statements in accordance with 13 Pa.C.S. (relating to commercial code). For the purpose of such filing, the sinking fund depository or trustee of a trust fund for note payments, if any, otherwise the fiscal agent or paying agent designated in the notes, may act as the representative of noteholders and, in such capacity, execute and file the financing statement and any continuation or termination statements as secured party. The authorizing determination may establish one or more sinking funds or trust funds for payment of notes and provide for periodic or other deposits therein and may contain such covenants or other provisions as the loan committee, by a majority of its members, shall determine. The amount of any tax anticipation notes issued in compliance with this chapter shall be general obligations of the city and, if the same shall not be paid within the fiscal year in which such notes were issued as required by section 403, shall be included in the budget of the city for the ensuing fiscal year and shall be payable from the taxes and revenues of such ensuing year.

(b) Enforcement of notes.—The holder of such tax anticipation notes issued by a city or the sinking fund depository of the applicable sinking fund,

¹ "coupons," in enrolled bill.

or trustee of any trust fund for note payment, if any, shall have the right to enforce such pledge of, security interest in and lien and charge on the pledged taxes and revenues of the city against all governmental agencies in possession of any of such taxes and revenues at any time which taxes and revenues may be collected directly from such officials upon notice by such holder or depository or trustee for application to the payment thereof as and when due or for deposit in the applicable sinking fund or trust fund at the times and in the amounts specified in such tax anticipation notes. Any government agencies in possession of any of such taxes and revenues shall make payment, against receipt therefor, directly to the holder of such tax anticipation notes or to such depository or trustee upon such notice and shall thereby be discharged from any further liability or responsibility for such taxes and revenues. If such payment shall be to a holder of tax anticipation notes, it shall be made against surrender of the notes to the payor for delivery to the city in the case of payment in full; otherwise, it shall be made against production of the notes for notation thereon of the amount of the payment. The provisions of this subsection with respect to the enforceability and collection of taxes and revenues which secure tax anticipation notes of a city shall supersede any contrary or inconsistent statutory provision or rule of law. This chapter shall be construed and applied to fulfill the legislative purpose of clarifying and facilitating temporary borrowings by a city by assuring to holders of tax anticipation notes the full and immediate benefit of the security therefor without delay, diminishment or interference based on any statute, decision, ordinance or administrative rule or practice.

(c) Limitation on previously pledged security.—Notwithstanding the foregoing, no taxes or revenues pledged to secure bonds of the authority or to secure payments due to the authority from a city pursuant to an agreement with the authority shall be pledged to secure payment of tax anticipation notes unless such pledge is, by its express terms, subordinate in all respects to the pledge of such taxes and revenues to secure the bonds of the authority or payments due to the authority and the written consent of the authority to such subordinated pledge is obtained prior to the issuance of the tax anticipation notes so secured. The holder of such tax anticipation notes so secured by a subordinated pledge described in this subsection shall have no right to enforce such pledge in the manner described in subsection (b) unless all payments due to the authority or due on the bonds of an authority secured by the senior pledge of such taxes and revenues shall have been made or provided for.

Section 406. Certification as to taxes and revenues to be collected.

Prior to each authorization of tax anticipation notes, the director of finance of the city shall make an estimate of the moneys to be received during the period when such notes will be outstanding from taxes then levied and assessed, and revenues, including, without limitation, subsidies or reimbursements to be received. Such estimate shall take due account of the past and anticipated collection experience of the city and of current economic conditions. The estimate shall be certified by the director of finance, and the written certificate of the director of finance, dated as of a date not more than

30 days prior to the date of the authorization of the notes, shall be filed with the proceedings authorizing the tax anticipation notes with the fiscal agent, sinking fund depository, trustee or paying agent for the notes or the authority, as provided in section 408 of this act.

Section 407. Sale of tax anticipation notes.

Tax anticipation notes may be sold at public, private or invited sale and at such price or prices as the loan committee, by a majority of its members, shall determine. At the time of delivery of each issue, series or subseries of tax anticipation notes, the director of finance of the city shall certify to the original purchasers thereof that the amount of all such notes to remain outstanding will not exceed the limitations of section 402 calculated, however, from the date of such certificate to the respective maturity dates of all such notes to remain outstanding. Such certificate shall be retained by the city until all tax anticipation notes issued during the fiscal year shall have been paid in full.

Section 408. Filing of proceedings with authority.

While any bonds of the authority are outstanding, prior to the delivery of tax anticipation notes to the original purchasers thereof, the city shall file with the authority:

- (1) the transcript of proceedings authorizing the issuance of the tax anticipation notes, consisting of the determination authorizing the notes;
- (2) the certificate required by section 406 as to the amount of taxes and revenues to be collected during the term of the tax anticipation notes;
- (3) the certificate required by section 407; and
- (4) a true copy of the accepted proposal for the anticipation notes.

Section 409. Purchase of tax anticipation notes by authority.

Subject to the limitations of this act, the authority is authorized with the approval of a qualified majority of the board to purchase tax anticipation notes of a city and to assign its rights to receive payment on such notes and the pledge of and security interest in the taxes and revenues of the city securing such tax anticipation notes.

Section 410. Failure to pay principal or interest.

If a city fails to pay principal or interest on any of its tax anticipation notes as the same becomes due and payable whether at the stated maturity date or upon a mandatory or unrevoked call for prior redemption and such failure shall continue for 30 days, the holder thereof shall, subject to the priorities created under this act and the provisions of any outstanding obligations of the city and to any limitation upon individual rights of action in the determination authorizing the tax anticipation notes, have the right to recover the amount due by action in the court of common pleas. The judgment recovered shall have an appropriate priority upon the moneys next coming into the treasury of the city.

Section 411. Remedies of holders of tax and revenue anticipation notes.

A holder of tax and revenue anticipation notes shall have the right, in addition to all other rights which may be conferred on such holder, subject only to any contractual restrictions binding upon such holder:

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

(2) By proceeding in equity, to obtain an injunction against any acts or things which may be unlawful or the violation of any of the rights of such holder of tax and revenue anticipation notes.

(3) To require the city to account as if it were the trustee of an express trust for the holders of tax and revenue anticipation notes for any pledged taxes or revenues received.

CHAPTER 5 OPTIONAL SALES AND USE TAX

Section 501. Definitions.

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

“Department.” The Department of Revenue of the Commonwealth.

“Tax.” The tax authorized to be imposed by the governing body of a city under this chapter.

Section 502. Construction of chapter.

The tax imposed by the governing body of a city pursuant to this chapter shall be in addition to any tax imposed by the Commonwealth pursuant to Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. Except for the differing situs provisions under section 504, the provisions of Article II of the Tax Reform Code of 1971 shall apply.

Section 503. Imposition of additional tax.

(a) Sales.—The governing body of a city may levy, assess and collect upon each separate sale at retail of tangible personal property or services, as defined in Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, within that city a tax on the purchase price. The tax shall be collected by the vendor from the purchaser and shall be paid over to the Commonwealth as provided in this chapter.

(b) Use.—In any city which imposes the tax authorized in subsection (a), there shall be levied, assessed and collected upon the use, within that city, of tangible personal property purchased at retail, and on services purchased at retail, as defined in Article II of the Tax Reform Code of 1971, a tax on the purchase price. The tax shall be paid over to the Commonwealth by the person who makes such use. The use tax imposed pursuant to this chapter shall not be paid over to the Commonwealth by any person who has paid the tax imposed by subsection (a) or has paid the tax imposed by this subsection to the vendor with respect to such use.

(c) Hotel.—In any city which imposes a tax authorized in subsection (a), there shall be levied, assessed and collected an excise tax on the rent upon every occupancy of a room or rooms in a hotel in the city. The tax shall be collected by the operator or owner from the occupant and paid over to the Commonwealth.

(d) Rate and uniformity.—

(1) The tax authorized by subsections (a), (b) and (c) may be imposed at a rate of either 0.5% or 1%.

(2) The tax imposed by subsections (a), (b) and (c) shall be uniform.

(e) Tax computation.—The tax imposed under subsections (a), (b) and (c) shall be computed as follows:

(1) In cities imposing the tax authorized by this section at the rate of 0.5%, the tax shall be computed as follows:

(i) If the purchase price is \$1 or less, no tax shall be collected.

(ii) If the purchase price is \$1.01 or more but less than \$3.01, 1¢ shall be collected.

(iii) If the purchase price is \$3.01 or more but less than \$5.01, 2¢ shall be collected.

(iv) If the purchase price is \$5.01 or more but less than \$7.01, 3¢ shall be collected.

(v) If the purchase price is \$7.01 or more but less than \$9.01, 4¢ shall be collected.

(vi) If the purchase price is \$9.01 or more but less than \$10.01, 5¢ shall be collected.

(vii) If the purchase price is more than \$10, 0.5% of each \$10 of purchase price plus the above bracket charges upon any fractional part of a \$10 increment shall be collected.

(2) In cities imposing the tax authorized by this section at the rate of 1%, the tax shall be computed as follows:

(i) If the purchase price is 50¢ or less, no tax shall be collected.

(ii) If the purchase price is 51¢ or more but less than \$1.51, 1¢ shall be collected.

(iii) If the purchase price is \$1.51 or more but less than \$2.51, 2¢ shall be collected.

(iv) If the purchase price is \$2.51 or more but less than \$3.51, 3¢ shall be collected.

(v) If the purchase price is \$3.51 or more but less than \$4.51, 4¢ shall be collected.

(vi) If the purchase price is \$4.51 or more but less than \$5.51, 5¢ shall be collected.

(vii) If the purchase price is \$5.51 or more but less than \$6.51, 6¢ shall be collected.

(viii) If the purchase price is \$6.51 or more but less than \$7.51, 7¢ shall be collected.

(ix) If the purchase price is \$7.51 or more but less than \$8.51, 8¢ shall be collected.

(x) If the purchase price is \$8.51 or more but less than \$9.51, 9¢ shall be collected.

(xi) If the purchase price is \$9.51 or more but less than \$10.01, 10¢ shall be collected.

(xii) If the purchase price is more than \$10, 1% of each \$10 purchase price plus the above bracket charges upon any fractional part of a \$10 increment shall be collected.

Section 504. Situs for imposition of tax.

(a) Situs for retail sales.—For purposes of this chapter and except as otherwise provided in this subsection, a sale at retail shall be deemed to be consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-State destination or to a common carrier for delivery to an out-of-State destination or the United States mails for delivery to an out-of-State destination. In the event a retailer has more than one place of business in this Commonwealth which participates in the sale, the sale shall be deemed to be consummated at the place of business of the retailer where the initial order for the tangible personal property is taken, even though the order must be forwarded elsewhere for acceptance, approval of credit, shipment or billing. A sale by a retailer's employee shall be deemed to be consummated at the place of business from which that employee works.

(b) Situs for vehicle, aircraft and motorcraft sales.—The sale at retail or use of a motor vehicle, trailer, semitrailer or mobile home, as defined in 75 Pa.C.S. (relating to vehicles), or of a motorboat, aircraft or other similar tangible personal property, required under either Federal or State laws to be registered or licensed, shall be deemed to have been completed or used at the address of the purchaser or user. The tax due shall be paid by the purchaser or user directly to the Department of Transportation at the time of making application for the issuance of a certificate of title or directly to the department if licensing by the Department of Transportation is not required or obtained.

(c) Situs for utility services.—The sale or use of steam, natural and manufactured gas, electricity, and telephone and telegraph service shall be deemed to occur at the service address in the city, which is the address where the telephone equipment is located and to which the telephone number is assigned or where the telegraph originated or where the meter which registers the service is located, without regard to where the services are rendered.

Section 505. Licenses.

The license issued pursuant to Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, or a separate license may be issued by the department for the collection and reporting of the taxes imposed by section 503. The license or licenses shall be nonassignable and subject to renewal periodically at such times as may be required by the department in regulations but in no event more frequently than once within a five-year period. No fee shall be charged for either a license or any renewal. Failure of any person to obtain a license shall not relieve that person of liability to pay the taxes imposed by this chapter.

Section 506. Rules and regulations.

(1) The rules and regulations promulgated under section 270 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, shall be applicable to the taxes imposed by section 503 insofar as such rules and regulations are consistent with section 503.

(2) The department shall administer and enforce the provisions of this chapter and is authorized to promulgate and enforce rules and regulations not inconsistent with the provisions of this chapter, relating to any matter or thing pertaining to the administration and enforcement of the provision of this chapter. The department may prescribe the extent to which any of such rules and regulations shall be applied without retroactive effect.

(3) The department, to cover its costs of administration, shall be entitled to retain a sum equal to costs of collection and shall inform the city in writing monthly of the sum retained and the costs of collection reimbursed. To provide a timely forecast and assure consideration of the sum retained, the department shall estimate its costs of collection for the next succeeding fiscal year and provide such estimates, with all supporting detail, to the chairperson and minority chairperson of the Appropriations Committee of the Senate and to the chairperson and minority chairperson of the Appropriations Committee of the House of Representatives, with a copy to the city and, in the event that all or any part of the tax imposed pursuant to this chapter is enacted as an intergovernmental cooperation authority tax pursuant to Chapter 6, a copy shall be provided to the authority. When the annual operating budget for the department is submitted to the General Assembly, the department shall also submit to the chairperson and minority chairperson of the Appropriations Committee of the Senate and to the chairperson and minority chairperson of the Appropriations Committee of the House of Representatives the actual sums retained for costs of collection in the preceding fiscal year, together with all supporting details.

Section 507. Exclusion from rate limitations.

Notwithstanding any other provision of law, the imposition of the tax authorized by section 503 shall not cause a reduction in the rate of tax imposed pursuant to section 23(c) of the act of June 27, 1986 (P.L.267, No.70), known as the Pennsylvania Convention Center Authority Act.

Section 508. Procedure and administration.

(a) Adoption of ordinance.—The governing body in any city desiring to impose the tax authorized by section 503 shall adopt an ordinance which shall state the tax rate and refer to this chapter.

(b) Notification to department.—A certified copy of a city ordinance shall be delivered to the department no later than 90 days prior to the effective date of that ordinance. The city ordinance may have an effective date which is no earlier than the 90th day following the effective date of this act.

(c) Copy of repeal ordinance.—A certified copy of a repeal ordinance shall be delivered to the department at least 30 days prior to the effective date of such repeal.

(d) Copy of rate change ordinance.—A certified copy of any ordinance changing the rate of the tax imposed by section 503 shall be delivered to the department at least 90 days prior to the effective date of such ordinance. Such rate changes shall be effective on the first January 1st which occurs 90 days after delivery of the rate change ordinance to the department.

Section 509. Dedication and disbursement.

(a) Local Sales and Use Tax Fund.—There is hereby created a Local Sales and Use Tax Fund. The State Treasurer shall be custodian of the Local Sales and Use Tax Fund, which shall be subject to the provisions of law applicable to funds listed in section 302 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code. Except to the extent provided in Chapter 6, taxes imposed pursuant to section 503 shall be received by the department and paid to the State Treasurer and, along with interest and penalties, less any collection costs allowed under this chapter and any refunds and credits paid, shall be credited to the Local Sales and Use Tax Fund not less frequently than every two weeks. During any period prior to the credit of moneys to the Local Sales and Use Tax Fund, interest earned on moneys received by the department and paid to the State Treasurer pursuant to this chapter shall be deposited into the Local Sales and Use Tax Fund. Moneys credited to the Local Sales and Use Tax Fund shall be at all times property of the city and shall be distributed as provided in this section. All moneys in the Local Sales and Use Tax Fund, including, but not limited to, moneys credited to the fund pursuant to this section, prior year encumbrances and the interest earned thereon, shall not lapse or be transferred to any other fund, but shall remain in the Local Sales and Use Tax Fund and must be used exclusively as provided in this section. Pending their disbursement to cities, moneys received on behalf of or deposited into the Local Sales and Use Tax Fund shall be invested or reinvested as are other funds in the custody of the State Treasurer in the manner provided by law. All earnings received from the investment or deposit of such funds shall be credited to the Local Sales and Use Tax Fund.

(b) Disbursement to cities.—On or before the 10th day of every month, the State Treasurer shall disburse to the city imposing the tax under this chapter the total amount of moneys which are, as of the last day of the previous month, contained in the Local Sales and Use Tax Fund.

CHAPTER 6 PENNSYLVANIA INTERGOVERNMENTAL COOPERATION AUTHORITY TAX

Section 601. Imposition of authority tax.

(a) Tax imposed.—Notwithstanding anything contained in the act of August 5, 1932 (Sp.Sess. P.L.45, No.45), referred to as the Sterling Act, the governing body of any city is hereby authorized to enact any combination of the following taxes, exclusively for purposes of the authority:

- (1) The tax authorized by Chapter 5.
- (2) A realty transfer tax such as is now or as may be hereafter enacted for general revenue purposes of the city pursuant to section 1301(b) of the

act of December 13, 1988 (P.L.1121, No.145), known as the Local Tax Reform Act.

(3) A tax on salaries, wages, commissions, compensation or other income received or to be received for work done by residents of the city, imposed pursuant to the provisions of the Sterling Act.

(b) Rate.—The rate of any tax which is enacted for the authority pursuant to this act, when combined with the rate of the same tax, if any, enacted by the governing body for city general revenue purposes, shall not exceed the maximum tax rate for such tax, if any, established by the General Assembly. Any tax enacted pursuant to this section shall be known as the Pennsylvania Intergovernmental Cooperation Authority Tax. For purposes of section 1 of the act of August 9, 1963 (P.L.640, No.338), entitled “An act empowering cities of the first class, coterminous with school districts of the first class, to authorize the boards of public education of such school districts to impose certain additional taxes for school district purposes, and providing for the levy, assessment and collection of such taxes,” and notwithstanding any provision therein to the contrary, the limit on the annual rate of the school district tax on income from the ownership, lease, sale or other disposition of tangible and intangible real and personal property shall be the total rate of tax imposed upon the wages or net profits of city residents by the governing body as authorized by this act and by any other law.

(c) Credits.—If the city imposes taxes pursuant to the act of May 30, 1984 (P.L.345, No.69), known as the First Class City Business Tax Reform Act, and provides credits of a percentage of the tax liability based upon net income under that act against a tax based upon net profits or gain pursuant to the Sterling Act and if the credits are not totally applied and exhausted against the city tax, the remaining credits shall be applied and charged against similar liability under any tax enacted pursuant to this section.

(d) Content of tax ordinance.—In any ordinance enacting such taxes, the city shall pledge to and agree with each and every obligee of the authority acquiring bonds secured by an authority pledge of such taxes that the city will not repeal the tax or reduce the rate of such tax imposed for such authority until all bonds so secured by the pledge of the authority, together with the interest thereon, are fully paid or provided for. Once the taxes authorized to be enacted by this section are imposed by the city, the revenues from such taxes shall be revenues and property of the authority and shall not be revenues or property of the city. Such taxes shall be collected by the Department of Revenue of the Commonwealth and shall not be subject to the appropriations by the governing body of the city or by the General Assembly. Section 602. Duration of tax.

Any tax imposed under this chapter shall continue in effect until all bonds of the authority which are secured by the authority’s pledge of such tax revenues are no longer outstanding. For as long as any such bonds remain outstanding, no governing body of a city shall repeal any ordinance or reduce the rate of tax imposed for the authority under this act.

Section 603. Creation of fund and disbursement.

(a) Pennsylvania Intergovernmental Cooperation Authority Tax Fund.—There is hereby created a Pennsylvania Intergovernmental Cooperation Authority Tax Fund. The State Treasurer shall be custodian of the Pennsylvania Intergovernmental Cooperation Authority Tax Fund, which shall be subject to the provisions of law applicable to funds listed in section 302 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code. Taxes imposed pursuant to section 601 of this act shall be received by the Department of Revenue of the Commonwealth and paid to the State Treasurer and, along with interest and penalties, less any collection costs allowed under this chapter and any refunds and credits paid, shall be credited to the Pennsylvania Intergovernmental Cooperation Authority Tax Fund not less frequently than every two weeks. During any period prior to the credit of moneys to the Pennsylvania Intergovernmental Cooperation Authority Tax Fund, interest earned on moneys received by the department and paid to the State Treasurer pursuant to this chapter shall be deposited into the Pennsylvania Intergovernmental Cooperation Authority Tax Fund. Moneys credited to the Pennsylvania Intergovernmental Cooperation Authority Tax Fund shall be distributed as provided in subsection (b). All moneys in the Pennsylvania Intergovernmental Cooperation Authority Tax Fund, including, but not limited to, moneys credited to the fund pursuant to this section, prior year encumbrances and the interest earned thereon, shall not lapse or be transferred to any other fund, but shall remain in the Pennsylvania Intergovernmental Cooperation Authority Tax Fund, and shall at all times be the property of the authority, and must be used exclusively as provided in this act. Pending their disbursement to the authority, moneys received on behalf of or deposited into the Pennsylvania Intergovernmental Cooperation Authority Tax Fund shall be invested or reinvested as are other funds in the custody of the State Treasurer in the manner provided by law. All earnings received from the investment or deposit of such funds shall be credited to the Pennsylvania Intergovernmental Cooperation Authority Tax Fund.

(b) Disbursement to Pennsylvania Intergovernmental Cooperation Authority.—At least weekly, the State Treasurer shall disburse the total amount of moneys which are, as of the close of business of the previous week, contained in the Pennsylvania Intergovernmental Cooperation Authority Tax Fund as a result of the tax imposed pursuant to section 601 to or upon the order of the authority and as provided in section 312. The State Treasurer shall make the initial disbursement pursuant to this subsection at the end of the third week of the month immediately following the effective date of the ordinance imposing the Pennsylvania Intergovernmental Cooperation Authority Tax.

Section 604. Collection of Pennsylvania Intergovernmental Cooperation Authority Taxes.

(a) General rule.—The Department of Revenue of the Commonwealth is charged with the administration, enforcement and collection of any tax imposed pursuant to section 601 and shall do so with respect to the tax

authorized to be imposed by Chapter 5, under the administration, enforcement and collection procedures and subject to the fines, forfeitures, penalties and interest charges all as are provided for in the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and with respect to any other tax enacted under the authority of this chapter, under the administration, enforcement and collection procedures and subject to the fines, forfeitures, penalties and interest charges as shall be specified in the ordinance enacting such tax.

(b) Cost of collection.—The Department of Revenue of the Commonwealth, to cover its costs of administration, shall be entitled to retain a sum equal to costs of collection and shall inform the authority in writing monthly of the sum retained and the costs of collection reimbursed. To provide a timely forecast and assure consideration of the sum retained, the Department of Revenue of the Commonwealth shall estimate its costs of collection for the next succeeding fiscal year and provide the estimates, with all supporting details, to the chairperson and minority chairperson of the Appropriations Committee of the Senate and to the chairperson and minority chairperson of the Appropriations Committee of the House of Representatives, with a copy to the authority. When the annual operating budget for the Department of Revenue of the Commonwealth is submitted to the General Assembly, the department shall also submit to the chairperson and minority chairperson of the Appropriations Committee of the Senate and to the chairperson and minority chairperson of the Appropriations Committee of the House of Representatives the actual sums retained for costs of collection in the preceding fiscal year, together with all supporting details.

(c) Appointment of agents.—Except for the collection and enforcement of the tax authorized to be imposed by Chapter 5, the Department of Revenue of the Commonwealth is authorized to appoint as its agents, tax officers, clerks, collectors and other assistants, including revenue and legal departments of cities imposing a tax under this chapter, to collect and enforce any tax, including interest and penalties, imposed under authority of this chapter; provided, however, that any moneys collected by any such agent shall not be commingled with any other funds of such agent and must be segregated and paid over to the Department of Revenue of the Commonwealth at least every two weeks.

CHAPTER 7 MISCELLANEOUS PROVISIONS

Section 701. Appropriation.

The sum of \$150,000 is hereby appropriated to the Pennsylvania Intergovernmental Cooperation Authority for the fiscal year July 1, 1990, to June 30, 1991, for the purpose of providing operating funds for the Pennsylvania Intergovernmental Cooperation Authority. The appropriation in this section is an advance which shall be repaid by the authority from the sources described in section 206(c) as soon as is practicable and in no event later than June 30, 1992. The General Assembly hereby declares that the advance of funds appropriated in this section is the absolute limit of its legal and moral obligations to the authority for any authority obligations or expenses.

Section 702. Original and exclusive jurisdiction of Supreme Court.

The Pennsylvania Supreme Court shall have exclusive jurisdiction to hear any challenge to or to render a declaratory judgment concerning the constitutionality of this act, the contractual rights of the parties relating to bonds issued pursuant to this act, or any action of the authority in issuing or attempting to issue bonds, whether with respect to the validity of the bonds, proper authorization of the bonds, the validity of any covenants, agreements or contracts provided by any resolution authorizing the bonds, or otherwise or any action of a city in entering into agreements with the authority in connection with the issuance of bonds by the authority. The Supreme Court is authorized to take such action as it deems appropriate, consistent with the Supreme Court retaining jurisdiction over such a matter, to find facts or to expedite a final judgment in connection with such a challenge or request for declaratory relief.

Section 703. General rights and prohibitions.

Nothing in this act shall limit the rights or impair the obligations of any city to comply with the provisions of any contract in effect on the effective date of this act or shall in any way impair the rights of the obligees of any city with respect to any such contract.

Section 704. Nondiscrimination.

The authority shall comply in all respects 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 705. Emergency payment deferral.

(a) Application.—Notwithstanding any provision of law, including, but not limited to, the act of December 18, 1984 (P.L.1005, No.205), known as the Municipal Pension Plan Funding Standard and Recovery Act, municipal ordinance, municipal resolution, municipal charter, pension plan agreement or pension plan contract to the contrary, this section shall apply to a city which has established and maintained, directly or indirectly, a pension plan for the benefit of its employees, irrespective of the manner in which the pension plan is administered and to the respective pension plan.

(b) Legislative finding.—The General Assembly finds that, until such time as the authority has been established and is able to provide necessary financial assistance to cities and when there is imminent danger that a city will be unable to pay its outstanding indebtedness and to provide basic services critical to the health and safety of its inhabitants, it is essential that the State exercise its sovereign power to safeguard the vital interests of its people by precluding such city from taking actions upon the existence of certain conditions which would be against the general good of such city and of the Commonwealth and that doing so is clearly for the promotion of the commonweal, the general good of the public and is a proper exercise of the sovereign right of the Commonwealth to protect lives, health, comfort and the general welfare of all people of the Commonwealth.

(c) Funding of pension plans.—

(1) The Secretary of the Budget shall examine prior to June 30, 1991, the financial condition of cities which have established pension plans for the benefit of their employees and shall determine based on such examination if any city's payment of its minimum obligation to fund its pension plan for the fiscal year ending June 30, 1991, is likely to cause the city to be unable to pay, prior to the city's receipt of the proceeds of the first series of bonds issued to finance a deficit described in section 317, the following:

- (i) principal of or interest on its outstanding bonds or lease payments securing bonds of other government agencies;
- (ii) payroll; or
- (iii) any other payments necessary to protect the health and safety of the citizens of the city.

(2) If the Secretary of the Budget shall make such determination with regard to a city, he shall notify the chief financial officer of the city of his determination, and, subject to the provisions of subsection (d), the city shall be prohibited from discharging any unpaid, identifiable minimum obligation to fund the pension plan of the city for the fiscal year of the city beginning July 1, 1990, and ending June 30, 1991, other than any such payment which has been ordered to be paid by a court of competent jurisdiction prior to the effective date of this act, unless:

(i) the city and the trustees of the pension fund have reached agreement that the payment due to the pension fund for such fiscal year shall be discharged by the city paying at least 10% of the amount owed by the first of each month commencing July 1, 1991, until the total amount due has been paid in accordance with such payment schedule; or

(ii) until payment has been made upon the occurrence of the earliest of:

(A) the authority either having issued bonds or secured credit for such city and the city is in receipt of the proceeds thereof which are permitted to be used and are sufficient to make pension payments;

(B) the city has issued and received the proceeds of tax anticipation notes as authorized by the General Assembly; or

(C) October 1, 1991.

(d) Deferral.—Whatever minimum obligation to fund the pension plan of a city for the fiscal year of a city beginning July 1, 1990, and ending June 30, 1991, remains unpaid as of June 30, 1991, shall not constitute a failure or potential failure to comply with the city's applicable funding standard requirements in accordance with the act of December 18, 1984 (P.L.1005, No.205), known as the Municipal Pension Plan Funding Standard and Recovery Act, and no cause of action in mandamus or otherwise shall arise by virtue of the city's failure to pay its minimum obligation within said fiscal year, provided that:

(i) the city complies with the provisions of the agreement with the trustees of the pension fund or with the other provisions of subsection (c); and

(ii) the city pays interest on any amount of its minimum obligation which remains unpaid as of June 30, 1991, which amount shall be added to the minimum obligation of the city for the fiscal year beginning July 1, 1991, with interest from July 1, 1990, on any amount remaining unpaid at a rate equal to the interest assumption used for the actuarial valuation report or the discount rate applicable to treasury bills issued by the Department of Treasury of the United States with a six-month maturity as of the last business day in June 1991, whichever is greater, plus an additional 2% interest, expressed as a monthly rate and compounded monthly.

(e) Waiver of pension review study requirements.—The provisions of section 7 of the act of July 9, 1981 (P.L.208, No.66), known as the Public Employee Retirement Study Commission Act, are hereby waived and shall not apply to this act.

(f) Definitions.—Unless the context clearly indicates otherwise, the definitions provided for in the act of December 18, 1984 (P.L.1005, No.205), known as the Municipal Pension Plan Funding Standard and Recovery Act, shall apply to this section.

Section 706. Construction of act.

(a) Liberal construction.—The provisions of this act providing for security for and rights and remedies of obligees of the authority shall be liberally construed to achieve the purposes stated and provided for by this act.

(b) Severability.—If any provision of the title or any chapter, section or clause of this act, or the application thereof to any person, party, corporation, public or private, shall be judged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any provision of the title or any chapter or any section or clause of this act, or the application of any part thereof to any other person, party, corporation, public or private, or circumstance, and, to this end, the provisions of the title or any chapter, section or clause of this act hereby are declared to be severable. It is hereby declared as the legislative intent that this act would have been adopted had any provision declared unconstitutional not been included herein.

Section 707. Limitation of authority powers.

Except as provided in section 210(i), nothing contained in this act shall be construed to confer upon the authority any powers with respect to a school district or to amend, repeal or supersede in any manner the act of August 9, 1963 (P.L.643, No.341), known as the First Class City Public Education Home Rule Act.

Section 708. Repeals.

(a) Partial.—The following acts and parts of acts are repealed to the extent specified:

Subchapter D of Chapter 2 of the act of July 10, 1987 (P.L.246, No.47), known as the Financially Distressed Municipalities Act, as to cities of the first class. The remainder of the Financially Distressed Municipalities Act shall be suspended as to cities of the first class until the termination of the authority established by this act.

Section 5(a) of Article XVII of the act of June 25, 1919 (P.L.581, No.274), entitled "An act for the better government of cities of the first class of this Commonwealth," absolutely, except as to loans or notes issued by a city pursuant to section 5(a) of Article XVII of the act which remain outstanding on the effective date of this act.

(b) General.—All other acts or parts of acts are repealed insofar as they are inconsistent with this act.

Section 709. Effective date.

This act shall take effect immediately.

APPROVED—The 5th day of June, A. D. 1991.

ROBERT P. CASEY