

No. 2001-110

## AN ACT

SB 1215

Amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, further providing for parking authority purposes and powers, bonds and facility transfers and for municipal authority definitions, method of incorporation, school district projects, purposes and powers, bonds, bondholders, governing bodies, contracting, property, termination and conveyances; and providing for continuation in office.

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

Section 1. Sections 5505(d)(4) and (18), 5506(a)(1)(iii) and (3) and 5516(b)(3) of Title 53 of the Pennsylvania Consolidated Statutes, added June 19, 2001 (P.L.287, No.22), are amended to read:

§ 5505. Purposes and powers.

\* \* \*

(d) Powers.—An authority has all powers necessary or convenient for the carrying out of the purposes under this section, including:

\* \* \*

(4) To acquire, purchase, hold, lease as lessee *and use* any property and any property interest necessary or desirable for carrying out the purpose of the authority. This paragraph includes franchises and property which is real, personal or mixed and which is tangible or intangible.

\* \* \*

(18) To enter into contracts with the Commonwealth, a municipality, *a county, a town, a township of the second class*, a corporation or an authority for the use of a project of the authority and fixing the amount to be paid for the contract.

\* \* \*

§ 5506. Bonds.

(a) Authorization.—

(1) A bond must be authorized by resolution of the board. The resolution must specify all of the following:

\* \* \*

(iii) Interest [not exceeding 6% annually, payable semiannually. For the period after April 30, 1970, and before May 3, 1971, the rate of interest may exceed 6% as determined by the corporate authorities as necessary to issue and sell the bond, but no bonds may be sold at less than 98% of its principal amount plus interest charges].

\* \* \*

(3) A bond may be sold at public or private sale for a price determined by the authority. No [bond] *bonds* may be sold at less than 98% of the principal amount plus interest charges. [The interest cost to maturity of the money received for a bond issue may not exceed 6% annually. For the period after April 30, 1970, and before May 3, 1971, the rate of interest may exceed 6% annually as determined by the corporate authorities as necessary to issue and sell the bond.]

\* \* \*

§ 5516. Transfer of existing facilities to authority.

\* \* \*

(b) Acquisition.—

\* \* \*

(3) The proposed action of the authority and the proposed agreement to acquire must be approved by the [city council] *legislative body*. Approval [shall] *must* be by two-thirds vote of all of the members of the [council] *legislative body*.

\* \* \*

Section 2. The definitions of “authority” and “provide financing for insurance reserves” in section 5602 of Title 53, added June 19, 2001 (P.L.287, No.22), are amended to read:

§ 5602. 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:

\* \* \*

“Authority.” A body politic and corporate created under this chapter; *under the former act of June 28, 1935 (P.L.463, No.191), known as the Municipality Authorities Act of one thousand nine hundred and thirty-five*; or under the act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945.

\* \* \*

“Provide financing for insurance reserves.” Financing, on behalf of one or more local government units or authorities, all or any portion of a reserve or a contribution toward a combined reserve, pool or other arrangement relating to self-insurance which has been established by one or more local government units pursuant to 42 Pa.C.S. § 8564 (relating to liability insurance and self-insurance) up to, but not exceeding, the amount provided in section [8227 (relating to sinking fund not required for small borrowings)] 8007 (relating to cost of project).

\* \* \*

Section 3. Sections 5603(f), 5606(d), 5607(a) introductory paragraph, (d)(9), (10), (11), (22), (23), (24)(i)(B) and (v) and (32), (e)(1) and (g) introductory paragraph, 5608(a)(1) introductory paragraph and (iii), (2) and (3), (b)(1) and (2) and (c), 5609(b)(5)(ii) and (7) and (e), 5610(a) and (b),

5614(a)(2) and (d), 5615(a)(2)(i), 5619(b) and (c) and 5622(b) of Title 53, added June 19, 2001 (P.L.287, No.22), are amended to read:

§ 5603. Method of incorporation.

\* \* \*

(f) Certification of officers.—When an authority has been organized and its officers elected, its secretary shall certify to the Secretary of the Commonwealth the names and addresses of its officers as well as the principal office of the authority. Any change in the location of the principal office shall likewise be certified to the Secretary of the Commonwealth within ten days after such change. An authority created under the laws of the Commonwealth *and* existing at the time this chapter is enacted, in addition to powers granted or conferred upon the authority, shall possess all the powers provided under this chapter.

§ 5606. School district projects.

\* \* \*

(d) Documentation.—The articles of merger or consolidation shall be filed on or before the day specified in the advertisement [to] *with* the Secretary of the Commonwealth together with the proof of publication of the notice required under subsection (c).

\* \* \*

§ 5607. Purposes and powers.

(a) Scope of projects permitted.—Every authority incorporated under this chapter shall be a body corporate and politic and shall be for the purposes of financing working capital; acquiring, holding, constructing, *financing*, improving, maintaining and operating, owning or leasing, either in the capacity of lessor or lessee, projects of the following kind and character and providing financing for insurance reserves:

\* \* \*

(d) Powers.—Every authority may exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section, including, but without limiting the generality of the foregoing, the following rights and powers:

\* \* \*

(9) To fix, alter, charge and collect rates and other charges in the area served by its facilities at reasonable and uniform rates to be determined exclusively by it for the purpose of providing for the payment of the expenses of the authority, the construction, improvement, repair, maintenance and operation of its facilities and properties and, in the case of an authority created for the purpose of making business improvements or providing administrative services, a charge for such services which is to be based on actual benefits and which may be measured on, among other things, gross sales or gross or net profits, the payment of the principal of and interest on its obligations and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations, or with a municipality [served or to be served by the

**authority]** and to determine by itself exclusively the services and improvements required to provide adequate, safe and reasonable service, including extensions thereof, in the areas served. If the service area includes more than one municipality, the revenues from any project shall not be expended directly or indirectly on any other project unless such expenditures are made for the benefit of the entire service area. Any person questioning the reasonableness or uniformity of a rate fixed by an authority or the adequacy, safety and reasonableness of the authority's services, including extensions thereof, may bring suit against the authority in the court of common pleas of the county where the project is located or, if the project is located in more than one county, in the court of common pleas of the county where the principal office of the project is located. The court of common pleas shall have exclusive jurisdiction to determine questions involving rates or service. Except in municipal corporations having a population density of 300 persons or more per square mile, all owners of real property in eighth class counties may decline in writing the services of a solid waste authority.

(10) In the case of an authority which has agreed to provide water service through a separate meter and separate service line to a residential dwelling unit in which the owner does not reside, to *impose and* enforce the owner's duty to pay a tenant's bill for service rendered to the tenant by the authority only if the authority notifies the owner and the tenant within 30 days after the bill first becomes overdue. Notification shall be provided by first class mail to the address of the owner provided to the authority by the owner and to the billing address of the tenant, respectively. Nothing in this paragraph shall be construed to require an authority to terminate service to a tenant, and the owner shall not be liable for any service which the authority provides to the tenant 90 or more days after the tenant's bill first becomes due unless the authority has been prevented by court order from terminating service to that tenant.

(11) In the case of an authority which has agreed to provide sewer service to a residential dwelling unit in which the owner does not reside, to *impose and* enforce the owner's duty to pay a tenant's bill for service rendered by the authority to the tenant. The authority shall notify the owner and the tenant within 30 days after the tenant's bill for that service first becomes overdue. Notification shall be provided by first class mail to the address of the owner provided to the authority by the owner and to the billing address of the tenant, respectively. Nothing in this paragraph shall be construed to relieve the owner of liability for such service unless the authority fails to provide the notice required in this paragraph.

\* \* \*

(22) To charge the cost of construction of a sewer or water main constructed by the authority against the properties benefited, improved or

accommodated by the construction according to the foot front rule. Charges shall be based upon the foot frontage of the properties benefited and shall be a lien against *such* properties. Charges may be assessed and collected and liens may be enforced in the manner provided by law for the assessment and collection of charges and the enforcement of liens of the municipality in which such authority is located. No charge shall be assessed unless prior to the construction of a sewer or water main the authority submitted the plan of construction and estimated cost to the municipality in which the project is to be undertaken and the municipality approved it. The properties benefited, improved or accommodated by the construction may not be charged an aggregate amount in excess of the approved estimated cost.

(23) To require the posting of financial security to insure the completion in accordance with the approved plat and with the rules and regulations of the authority of any water mains or sanitary sewer lines, or both, and related apparatus and facilities required to be installed by or on behalf of a developer under an approved land development or subdivision plat as these terms are defined under the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code. If financial security is required by the authority and without limitation as to other types of financial security which the authority may approve, which approval shall not be unreasonably withheld, federally chartered or Commonwealth-chartered lending institution irrevocable letters of credit and restrictive or escrow accounts in these lending institutions shall be deemed acceptable financial security. Financial security shall be posted with a bonding company or federally chartered or Commonwealth-chartered lending institution chosen by the party posting the financial security if the bonding company or lending institution is authorized to conduct business within this Commonwealth. The bond or other security shall provide for and secure to the authority the completion of required improvements within one year from the date of posting of the security. The amount of financial security shall be equal to 110% of the cost of the required improvements for which financial security is to be posted. The cost of required improvements shall be established by submitting to the authority a bona fide bid from a contractor chosen by the party posting the financial security. In the absence of a bona fide bid, the cost shall be established by an estimate prepared by the authority's engineer. If the party posting the financial security requires more than one year from the date of posting the financial security to complete the required improvements, the amount of financial security may be increased by an additional 10% for each one-year period beyond the first anniversary date from the initial posting date or to 110% of the cost of completing the required improvements as reestablished on or about the expiration of the preceding one-year period by using the above bidding procedure. As the work of installing the required improvements proceeds, the party

posting the financial security may request the authority to release or authorize the release of, from time to time, portions of the financial security necessary to pay the contractor performing the work. Release requests shall be in writing addressed to the authority, and the authority shall have 45 days after receiving a request to ascertain from the authority engineer, certified in writing, that the portion of the work has been completed in accordance with the approved plat. Upon receiving written certification, the authority shall authorize release by the bonding company or lending institution *of* an amount estimated by the authority engineer to fairly represent the value of the improvements completed. If the authority fails to act within the 45-day period, it shall be deemed to have approved the requested release of funds. The authority may, prior to final release at the time of completion and certification by its engineer, require retention of 10% of the estimated cost of improvements. If the authority accepts dedication of all or some of the required improvements following completion, it may require the posting of financial security to secure structural integrity of the improvements as well as the functioning of the improvements in accordance with the design and specifications as depicted on the final plat *and the authority's rules and regulations*. This financial security [may] *shall expire not later than* 18 months from the date of acceptance of dedication and shall be of the same type as set forth in this paragraph with regard to that which is required for installation of the improvements, except that it shall not exceed 15% of the actual cost of installation of the improvements. Any inconsistent ordinance, resolution or statute [inconsistent] is null and void.

(24) To charge enumerated fees to property owners who desire to or are required to connect to the authority's sewer or water system. Fees shall be based upon the duly adopted fee schedule which is in effect at the time of payment and shall be payable at the time of application for connection or at a time to which the property owner and the authority agree. In the case of projects to serve existing development, fees shall be payable at a time to be determined by the authority. An authority may require that no capacity be guaranteed for a property owner until the tapping fees have been paid or secured by other financial security. The fees shall be in addition to any charges assessed against the property in the construction of a sewer or water main by the authority under paragraphs (21) and (22) as well as any other user charges imposed by the authority under paragraph (9) but shall not include costs included in the calculation of such fees.

(i) The fees may include any of the following fee components if they are separately set forth in a resolution adopted by the authority to establish these fees:

\* \* \*

(B) Customer facilities fee. It may not exceed an amount based upon the actual cost of facilities serving the connected property

from the property line or curb stop to the proposed dwelling or building to be served. The fee shall be chargeable only if the authority installs the customer facilities. In lieu of payment of the customer facilities fee, an authority may require the construction of those facilities by the property owner who requests customer facilities. In the case of water service, the fee may include the cost of a water meter *and* installation if the authority provides or installs the water meter. If the property connected or to be connected with the sewer system of the authority is not equipped with a water meter, the authority may install a meter at its own cost and expense. If the property is supplied with water from the facilities of a public water supply agency, the authority shall not install a meter without the consent and approval of the public water supply agency.

\* \* \*

(v) As used in this paragraph, the term "residential customer" shall also include those developing property for residential dwellings that require multiple tapping fee permits. This paragraph shall not be applicable to intermunicipal or interauthority agreements relative to the purchase of excess capacity by an authority or municipality in effect prior to [December 20, 2000] *February 20, 2001*.

\* \* \*

(32) If a sewer system or water system or any part or extension owned by an authority has been constructed at the expense of a private person or corporation, the authority may charge [another] *a* tapping fee. The authority shall refund the tapping fee *or any part of the fee* to the person or corporation who paid for the construction of the sewer or water system or [the] *any* part or extension of it.

\* \* \*

(e) Prohibition.—

(1) An authority may not pledge the credit or taxing power of the Commonwealth or *its* political subdivision.

\* \* \*

(g) Authorization to make business improvements and provide administrative services.—An authority may be established to make business improvements or provide administrative services in districts designated by a municipality *or by municipalities acting jointly* and zoned commercial or used for general commercial purposes or in contiguous areas if the inclusion of a contiguous area is directly related to the improvements and services proposed by the authority. The authority shall make planning or feasibility studies to determine needed improvements or administrative services.

\* \* \*

§ 5608. Bonds.

(a) Authorization.—

(1) A bond must be authorized by resolution of the board. The resolution [must] *may* specify all of the following:

\* \* \*

(iii) Interest[, not exceeding 6% annually, payable semiannually. For the period after July 1, 1970, and ending June 30, 1976, the rate of interest may exceed 6% as determined by the corporate authorities as necessary to issue and sell the bond].

\* \* \*

(2) A bond must be signed by or shall bear the facsimile signature of such officers as the authority determines. Coupon bonds must have attached interest coupons bearing the facsimile signature of the treasurer of the authority as prescribed in the authorizing resolution. A bond may be issued and delivered notwithstanding that one or more of the signing officers or the treasurer has ceased to be an officer when the bond is actually delivered. *A bond must be authenticated by an authenticating agent, a fiscal agent or a trustee, if required by the authorizing resolution.*

(3) A bond may be sold at public or private sale for a price determined by the authority. [No bond may be sold at less than 98% of the principal amount plus interest charges. The interest cost to maturity of the money received for a bond issue may not exceed 6% annually. For the period after July 1, 1970, and before June 30, 1976, the rate of interest may exceed 6% annually as determined by the corporate authorities as necessary to issue and sell the bond.]

\* \* \*

(b) Provisions.—A resolution authorizing a bond may contain provisions which shall be part of the contract with the bond holder as to the following:

(1) Pledging the full faith and credit of the authority but not of the Commonwealth or any political [subdivisions] *subdivision* for the [obligation] *bond* or restricting the [full faith and credit] *obligation* of the authority *on the bond* to all or any of the revenue of the authority from all or any projects or properties.

(2) The construction, *financing*, improvement, operation, extension, enlargement, maintenance and repair of the project, *the financing for insurance reserves* and the duties of the authority with reference to these matters.

\* \* \*

(c) Deeds of trust.—An authority may enter into any deed of trust, indenture or other agreement with any bank or trust company or other person in the United States having power to enter into such an arrangement, including any Federal agency, as security for a bond and may assign and pledge all or any of the revenues or receipts of the authority under such deed, indenture or agreement. The deed of trust, indenture or other agreement may contain provisions as may be customary in such instruments



or as the authority may authorize, including provisions as to *all of the following*:

(1) [**construction**] *Construction*, financing, improvement, operation, maintenance and repair of a project; *financing for insurance reserves*; and the duties of the authority with reference to these matters[;].

(2) [**application**] *Application* of funds and the safeguarding of funds on hand or on deposit[;].

(3) [**rights**] *Rights* and remedies of trustee and bondholder, including restrictions upon the individual right of action of a bondholder[; **and**].

(4) [**terms**] *Terms* and provisions of the bond or the resolution authorizing the issuance of the bond.

\* \* \*

§ 5609. Bondholders.

\* \* \*

(b) Trustee.—

\* \* \*

(5) A receiver under paragraph (4):

\* \* \*

(ii) may operate and maintain the facility or part *of the facility*;

\* \* \*

(7) The trustee has all powers necessary or appropriate for the exercise of functions specifically set forth in this subsection *or incident to the general representation of the bondholders in the enforcement or protection of their rights*.

\* \* \*

[(e) **Definition**.—As used in this section, the terms “advertisement” or “due public notice” shall mean a notice published at least ten days before the award of a contract in a newspaper of general circulation published in the municipality where the authority has its principal office. If no newspaper is published in that municipality, the notice shall be published in a newspaper in the county where the authority has its principal office. Notice may be waived if the authority determines an emergency exists which requires the authority to purchase the supplies and materials immediately.]

§ 5610. Governing body.

(a) Board.—The powers of each authority shall be exercised by a board composed as follows:

(1) If the authority is incorporated by one municipality, the board shall consist of a number of members, not less than five, as enumerated in the articles of incorporation. The governing body of the municipality shall appoint the members of the board, whose terms of office shall commence on the *effective* date of *their* appointment. One member shall serve for one year, one for two years, one for three years, one for four years and one for five years commencing with the first Monday in January next succeeding the date of incorporation or amendment. If there

are more than five members of the board, their terms shall be staggered in a similar manner for terms of one to five years from the first Monday in January next succeeding. Thereafter, whenever a vacancy has occurred by reason of the expiration of the term of any member, the governing body shall appoint a member of the board for a term of five years from the date of expiration of the prior term to succeed the member whose term has expired.

(2) If the authority is incorporated by two or more municipalities, the board shall consist of a number of members at least equal to the number of municipalities incorporating the authority, but in no event less than five. When one or more additional municipalities join an existing authority, each of the joining municipalities shall have similar membership on the board as the municipalities then members of the authority and the joining municipalities may determine by appropriate resolutions. The members of the board of a joint authority shall each be appointed by the governing body of the incorporating or joining municipality he represents, and their terms of office shall commence on the *effective* date of *their* appointment. One member shall serve for one year, one for two years, one for three years, one for four years and one for five years from the first Monday in January next succeeding the date of incorporation, amendment or joinder, and if there are more than five members of the board, their terms shall be staggered in a similar manner for terms of from one to five years commencing with the first Monday in January next succeeding. Thereafter, whenever a vacancy has occurred by reason of the expiration of the term of any member, the governing body of the municipality which has the power of appointment shall appoint a member of the board for a term of five years from the date of expiration of the prior term.

(b) Residency.—

(1) Except as provided for in subsection (c), the members of the board, each of whom shall be a [resident] *taxpayer in, maintain a business in or be a citizen* of the municipality by which he is appointed *or be a taxpayer in, maintain a business in or be a citizen of a municipality into which one or more of the projects of the authority extends or is to extend or to which one or more projects has been or is to be leased*, shall be appointed, their terms fixed and staggered and vacancies filled pursuant to the articles of incorporation or the application of membership under section 5604 (relating to municipalities withdrawing from and joining in joint authorities). Where two or more municipalities are members of the authority, they shall be apportioned pursuant to the articles of incorporation or the application for membership under section 5604. Except for special service districts located in whole or in part in cities of the first class *or as provided in paragraph (2)*, a majority of an authority's board members shall be

citizens residing in the incorporating municipality or incorporating municipalities of the authority.

*(2) Each member of the board of a business improvement district authority that was established by a borough pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, on or before the effective date of this paragraph shall be a taxpayer in, maintain a business in or be a citizen of the borough by which that member is appointed.*

\* \* \*

§ 5614. Competition in award of contracts.

(a) Services.—

\* \* \*

(2) Paragraph (1) does not apply to *construction*, reconstruction, repair or work done by employees of the authority or by labor supplied under agreement with a Federal or State agency with supplies and materials purchased as provided in this section.

\* \* \*

(d) Notice.—The term “advertisement” or “public notice,” wherever used in this section, shall mean a notice published at least ten days before the award of a contract in a newspaper of general circulation published in the municipality where the authority has its principal office or, if no newspaper of general circulation is published therein, in a newspaper of general circulation in the county where the authority has its principal office. *Notice may be waived if the authority determines that an emergency exists which requires the authority to purchase the supplies and materials immediately.*

\* \* \*

§ 5615. Acquisition of lands, water and water rights.

(a) Authorization.—

\* \* \*

(2) The right of eminent domain does not apply to:

(i) Property owned or used by the United States, the Commonwealth or any of its political subdivisions, *or an agency of any of them*, or any body politic and corporate organized as an authority under any law of the Commonwealth or by any agency.

\* \* \*

§ 5619. Termination of authority.

\* \* \*

(b) Conveyance of property.—When an authority has finally paid and discharged all bonds issued and outstanding and the interest due on them and settled all other outstanding claims against it, the authority may convey all its property to the municipality *or municipalities or, if the property is public school property, then to the school district for which the property was financed*, and terminate its existence.

(c) Certificate.—[A certificate requesting the termination of the existence of an authority shall be filed in the office of the Secretary of the Commonwealth.] *An authority requesting to terminate its existence must submit a certificate requesting termination to the municipality which created it.* If the certificate is approved by the municipality [creating the authority] by its ordinance[,], *or resolution, the certificate shall be filed in the office of the Secretary of the Commonwealth; and the secretary shall note the termination of existence on the record of incorporation and return the certificate with approval to the board. The board shall cause the certificate to be recorded in the office of the recorder of deeds of the county. Upon recording, the property of the authority shall pass to the municipality[,], or municipalities or, if the property is public school property, then to the school district for which the property was financed;* and the authority shall cease to exist.

§ 5622. Conveyance by authorities to municipalities or school districts of established projects.

\* \* \*

(b) Public school project.—A public school project undertaken under this chapter may be acquired by a school district to which the project was leased if the school district by appropriate resolution signifies a desire to do so. An authority shall convey the public school project to the school district by appropriate [resolution] *instrument* upon the assumption by the school district of all the obligations incurred by the authority with respect to that project.

\* \* \*

Section 4. Notwithstanding any provision of section 2 of the act of December 20, 2000 (P.L.792, No.112), entitled “An act amending the act of May 2, 1945 (P.L.382, No.164), entitled ‘An act providing for the incorporation as bodies corporate and politic of “Authorities” for municipalities, counties and townships; prescribing the rights, powers and duties of such Authorities heretofore or hereafter incorporated; authorizing such Authorities to acquire, construct, improve, maintain and operate projects, and to borrow money and issue bonds therefor; providing for the payment of such bonds, and prescribing the rights of the holders thereof; conferring the right of eminent domain on such Authorities; authorizing such Authorities to enter into contracts with and to accept grants from the Federal Government or any agency thereof; and conferring exclusive jurisdiction on certain courts over rates,” to the contrary, any member of a board of a municipality authority who was appointed prior to the effective date (February 20, 2001) of the act of December 20, 2000 (P.L.792, No.112) and who immediately prior to the effective date (February 20, 2001) of the act of December 20, 2000 (P.L.792, No.112) was qualified to be a member of a board under section 7A of the former act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, shall remain

shall remain and be deemed to have remained at all times qualified to be a member of the board until the regular expiration of the member's term.

Section 5. This act shall apply retroactively to June 19, 2001.

Section 6. This act shall take effect immediately.

APPROVED—The 17th day of December, A.D. 2001.

MARK S. SCHWEIKER