

LEGISLATIVE REFERENCE BUREAU

L.R.B. Form No.4

2005D06614CMM

No. HB 2036

AN ACT

Amending the act of August 7, 1963 (P.L.549, No.290), referred to as the Pennsylvania Higher Education Assistance Agency Act, adding definitions; further providing for powers and duties of the Pennsylvania Higher Education Assistance Agency; establishing the Commonwealth Student Grant and Loan Forgiveness Authority and its powers and duties; providing for the transfer of certain powers, duties and functions from the agency to the Commonwealth Student Grant and Loan Forgiveness Authority; further providing for applicability; and providing for related transitional provisions.

INTRODUCED _____, **20** _____

By Turzai, Mike **Seat NO.** 162

By Blaum, Kevin **Seat NO.** 82

By Yudichak, John **Seat NO.** 72

By Caltagirone, Thomas **Seat NO.** 208

- Clymer, Paul 3
- Creighton, Thomas 43
- Denlinger, Gordon 88
- Ellis, Brian 106
- Reichley, Douglas 143
- Schroder, Curt 122
- Shapiro, Josh 75
- Wilt, Rod 138

Referred to Committee on

Date _____ **20** _____

Reported _____ **20** _____

As Committed-Amended

By Hon. _____

2005D06614

06614MSP:CMM 10/05/05

#24

AN ACT

1 Amending the act of August 7, 1963 (P.L.549, No.290), entitled,
2 as amended, "An act creating the Pennsylvania Higher
3 Education Assistance Agency; defining its powers and duties;
4 conferring powers and imposing duties on the Governor,
5 President Pro Tempore of the Senate, Speaker of the House of
6 Representatives, Superintendent of Public Instruction and the
7 Department of Auditor General; and making appropriations,"
8 adding definitions; further providing for powers and duties
9 of the Pennsylvania Higher Education Assistance Agency;
10 establishing the Commonwealth Student Grant and Loan
11 Forgiveness Authority and its powers and duties; providing
12 for the transfer of certain powers, duties and functions from
13 the agency to the Commonwealth Student Grant and Loan
14 Forgiveness Authority; further providing for applicability;
15 and providing for related transitional provisions.

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

18 Section 1. Section 2.1. of the act of August 7, 1963
19 (P.L.549, No.290), referred to as the Pennsylvania Higher
20 Education Assistance Agency Act, is amended by adding
21 definitions to read:

22 Section 2.1. Definitions.--The following words and phrases
23 when used in this act shall have, unless the context clearly
24 indicates otherwise, the meanings given to them in this section:

1 "Authority." The Commonwealth Student Grant and Loan
2 Forgiveness Authority established under section 10.1.

3 "Authority board." The board of the Commonwealth Student
4 Grant and Loan Forgiveness Authority.

5 * * *

6 Section 2. Section 4 introductory paragraph, (1.1), (1.3)
7 and (2) of the act, amended December 29, 1982 (P.L.1450,
8 No.330), are amended and the section is amended by adding a
9 subsection to read:

10 Section 4. Powers and Duties.--(a) In furtherance of the
11 purposes set forth in this act, the board of directors shall
12 have the following powers:

13 * * *

14 (1.1) As a public corporation and body politic subject to
15 examination by the Auditor General of the Commonwealth, the
16 agency shall be deemed an "eligible lender" as defined in [Part
17 B of Title IV of the Federal] section 435 of the Higher
18 Education Act of 1965 (Public Law 89-329, 20 U.S.C. § 1085) and
19 in [Part C] section 737 of the Health Professions Educational
20 Assistance Act of 1976 (Public Law 94-484, 90 Stat. 2265) and,
21 pursuant to the provisions of those acts and any subsequent
22 amendments thereto or other applicable Federal programs, be
23 entitled to exercise all the authority, rights and privileges of
24 an "eligible lender." Such authority, rights and privileges
25 shall include but not be limited to the following:

26 (i) To do whatever is necessary to enable students who are
27 parties to loans made, funded or guaranteed under this act to
28 qualify for Federal interest subsidy, special allowance, loan
29 forgiveness or other applicable benefits.

30 (ii) To charge and collect premiums for insurance on loans

1 and other appropriate charges and pay such insurance premiums or
2 a portion thereof and other charges as are appropriate or
3 required by applicable Federal statutes or agreements.

4 (iii) To enter into contracts with schools, lenders,
5 individuals, corporations, the Student Loan Marketing
6 Association, other agencies of the Commonwealth, other states
7 and the Federal Government to make, service, invest in,
8 purchase, make commitments to purchase, take assignments of or
9 administer loans made or insured under this act, the Health
10 Professions Educational Assistance Act of 1976, or other
11 programs approved by the board of directors and to provide for
12 loan forgiveness, loan consolidation, loan referral service and
13 graduated repayment. Loans to lenders or postsecondary
14 institutions made under this clause may be made under terms and
15 conditions requiring that the funds so loaned be used for the
16 making of loans to categories of students as defined and
17 established by the board[. Any such contract of the agency to
18 service student loans shall not be subject to the provisions of
19 the act of June 21, 1957 (P.L.390, No.212), referred to as the
20 Right-to-Know Law.], provided that all fees and other charges
21 and terms of such loans are charged and offered on a uniform
22 basis and in a manner that does not discriminate against or
23 advantage any particular lender or group of lenders. For
24 purposes of this clause, contract shall include schedules or
25 exhibits relating to pricing or schedules relating to equipment,
26 time charges, service charges or other charges pertinent to an
27 agency contract to service student loans. Any citizen of the
28 Commonwealth of Pennsylvania who desires to examine, inspect or
29 copy any such contract shall apply to the Attorney General. Upon
30 receipt of any such application, the Attorney General shall

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

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

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

26 * * *

27 [(1.3) To establish annually the award of the "assistance
28 grant" in the act of July 18, 1974 (P.L.483, No.174), known as
29 "The Institutional Assistance Grants Act" by dividing the total
30 amount annually appropriated to the "agency" pursuant to that

1 act by the number of "Pennsylvania State scholarship students"
2 certified to the "agency" pursuant to that act.]

3 (2) To pay costs and fees incurred by lenders and others in
4 making loans, advancing funds representing loans issued through
5 a line of credit advanced by the agency or the lender and
6 performing other functions on behalf of the agency[.], provided
7 that payment of such costs and fees are offered to all lenders
8 on a uniform basis and in a manner that does not discriminate
9 against or advantage any particular lender or group of lenders.

10 * * *

11 (b) Notwithstanding any other provision of this act to the
12 contrary, in connection with the exercise of the powers
13 specified in this section:

14 (1) With regard to any lender that originates, in any given
15 academic year, a minimum of one million dollars (\$1,000,000) of
16 student loans originated under the Federal Family Education Loan
17 Program pursuant to Part B of Title IV of the Higher Education
18 Act of 1965 (Public Law 89-329, 20 U.S.C. § 1071 et seq.) at
19 Pennsylvania postsecondary institutions, the board of directors,
20 upon request of the lender, shall cause the agency to provide
21 guaranty, origination, disbursement, collection, systems support
22 and related services and provide the lender with access to the
23 agency's network operating systems, in a manner that does not
24 discriminate against or advantage any such lender and at rates
25 and upon terms and conditions that are the same for all such
26 lenders, regardless of whether a lender participates in or
27 otherwise contracts with the agency for any program or product
28 offered or administered by the agency.

29 (2) The board of directors shall not use, without good
30 cause, its audit or investigatory powers in a manner that

1 subjects a lender or postsecondary institution to audits or
2 investigations that are more stringent or more frequently
3 conducted than audits or investigations conducted for any other
4 postsecondary institution or lender.

5 Section 3. The act is amended by adding sections to read:

6 Section 10.1. Commonwealth Student Grant and Loan

7 Forgiveness Authority.--(a) There is established an independent
8 authority to be known as the Commonwealth Student Grant and Loan
9 Forgiveness Authority. The authority shall be an instrumentality
10 of the Commonwealth and a body corporate and politic, with
11 corporate succession.

12 (b) The authority shall be governed by a board. The powers
13 of the authority shall be exercised by the board.

14 (c) Expenses of the authority shall be paid from assets or
15 income of the authority. Except as provided in this act or by
16 other law, the Commonwealth shall not be responsible for funding
17 the expenses of the authority.

18 (d) The fiscal year of the authority shall be the same as
19 the fiscal year of the Commonwealth.

20 (e) (1) The accounts and books of the authority shall be
21 examined and audited annually by an independent certified public
22 accounting firm.

23 (2) The authority shall, by December 31 of each year, file a
24 copy of the audit required by clause (1) with the Secretary of
25 the Senate and the Chief Clerk of the House of Representatives.

26 (f) The authority shall file such reports as required by
27 law.

28 (g) The authority shall annually publish a concise financial
29 statement in the Pennsylvania Bulletin.

30 (h) The agency and executive agencies shall cooperate with

1 and provide assistance to the authority without financial
2 reimbursement.

3 (i) The authority shall exist until terminated by law.

4 (j) The authority shall be considered as an independent
5 agency for the purposes of 62 Pa.C.S. Pt. I (relating to
6 Commonwealth procurement code).

7 (k) The following acts shall apply to the authority and the
8 authority board:

9 (1) The act of June 21, 1957 (P.L.390, No.212), referred to
10 as the Right-to-Know Law.

11 (2) The act of July 19, 1957 (P.L.1017, No.451), known as
12 the "State Adverse Interest Act."

13 (3) The provisions of 65 Pa.C.S. Chs. 7 (relating to open
14 meetings) and 11 (relating to ethics standards and financial
15 disclosures).

16 (1) The authority board shall be composed of the following
17 members:

18 (1) An individual appointed by the Governor.

19 (2) Four legislative appointees.

20 (i) Appointments are as follows:

21 (A) One individual appointed by the President pro tempore of
22 the Senate.

23 (B) One individual appointed by the Minority Leader of the
24 Senate.

25 (C) One individual appointed by the Speaker of the House of
26 Representatives.

27 (D) One individual appointed by the Minority Leader of the
28 House of Representatives.

29 (ii) Legislative appointees shall serve at the pleasure of
30 the appointing authority.

1 (m) The members of the authority board shall select a member
2 of the board to serve as chairperson. The members shall select
3 from among themselves such officers as they shall determine.

4 (n) The authority board shall meet at the call of the
5 chairperson.

6 (o) Three members of the authority board shall constitute a
7 quorum and the following shall apply:

8 (1) The consent of at least four members of the authority
9 board shall be necessary to take any action on behalf of the
10 authority for any of the following:

11 (i) Adopting bylaws.

12 (ii) Hiring professionals under subsection (u) (5) and (6).

13 (2) A majority of the authority board shall be necessary to
14 take any other action on behalf of the authority.

15 (p) The members of the authority board shall be entitled to
16 no compensation for their services as members of the authority
17 board but shall be entitled to reimbursement for all necessary
18 and reasonable expenses incurred in connection with the
19 performance of their duties as members of the authority board.

20 (q) The members of the authority board and the professional
21 personnel of the authority board shall stand in a fiduciary
22 relationship with the Commonwealth and the authority as to the
23 moneys in the fund, moneys in the accounts of the authority and
24 investments of the authority.

25 (r) The members of the authority board in performance of
26 their duties under this act shall exercise the standard of care
27 required by 20 Pa.C.S. Ch. 73 (relating to municipalities
28 investments).

29 (s) Members of the authority board shall not be liable
30 personally on any obligations of the authority, including bonds

1 of the authority.

2 (t) Appointing authorities shall appoint initial members to
3 the authority board within 30 days of the effective date of this
4 section. Whenever a vacancy occurs on the authority board, the
5 appointing authority shall appoint a successor member within 30
6 days of the vacancy.

7 (u) The authority may do all of the following:

8 (1) Adopt bylaws and guidelines as necessary.

9 (2) Sue and be sued, implead and be impleaded, interplead,
10 complain and defend in any court.

11 (3) Adopt, use and alter a corporate seal.

12 (4) Establish accounts necessary or desirable for its
13 corporate purposes.

14 (5) Employ an executive director and other persons as are
15 necessary or convenient for carrying on the business of the
16 authority.

17 (6) Retain attorneys, accountants, auditors and financial
18 experts, to render services and engage the services of other
19 advisors, consultants and agents as necessary. For the purposes
20 of this clause, the authority shall be considered an independent
21 agency for purposes of the act of October 15, 1980 (P.L.950,
22 No.164), known as the "Commonwealth Attorneys Act."

23 (7) Pay or satisfy obligations of the authority.

24 (8) Acquire, accept, purchase, receive, collect, hold,
25 convey and invest funds, fees and property, whether tangible or
26 intangible, from all sources, directly or by assignment, pledge
27 or otherwise.

28 (9) Sell, transfer, convey and dispose of any property,
29 whether tangible or intangible.

30 (10) To establish annually the award of the "assistance

1 grant" set forth in the act of July 18, 1974 (P.L.483, No.174),
2 known as "The Institutional Assistance Grants Act," by dividing
3 the total amount annually appropriated to the agency pursuant to
4 that act by the number of "Pennsylvania State scholarship
5 students" certified to the agency pursuant to that act.

6 (11) Exercise rights provided by law for the benefit or
7 protection of the authority or obligees of the authority.

8 (12) Invest money of the authority not required for
9 immediate use, as the authority board determines.

10 (13) Procure insurance against any loss in connection with
11 its programs, property and other assets.

12 (14) Promulgate regulations and adopt guidelines and
13 statements of policy containing restrictions as it may deem
14 necessary and appropriate to effectuate the public purposes of
15 this chapter.

16 (15) Do any appropriate act necessary or convenient to:

17 (i) Carry out and effectuate the purposes of this chapter.

18 (ii) Exercise the powers set forth in this subsection,
19 including any act reasonably implied from those powers.

20 (16) The authority shall administer the programs established
21 in section 10.2.

22 Section 10.2. Transfer of Powers, Duties and Functions to
23 Commonwealth Student Grant and Loan Forgiveness Authority;
24 Transitional Provisions.--(a) Notwithstanding any other
25 provision of this act or other law to the contrary:

26 (1) The powers and duties of the agency set forth in the
27 following acts, except as otherwise provided in paragraph (9),
28 shall be transferred to the authority:

29 (i) The act of January 25, 1965 (1966 P.L.1546, No.541),
30 referred to as the Higher Education Scholarship Law.

1 (ii) The act of October 11, 1972 (P.L.899, No.213), entitled
2 "An act providing scholarships for certain dependents of members
3 of the armed services who while on active duty are taken as
4 prisoners of war or are reported missing in action and making an
5 appropriation."

6 (iii) The act of October 11, 1972 (P.L.909, No.216), known
7 as the "Veterans' Education Act of 1971."

8 (iv) The act of July 18, 1974 (P.L.483, No.174), known as
9 "The Institutional Assistance Grants Act."

10 (v) The act of December 16, 1988 (P.L.1259, No.155), known
11 as the "Urban and Rural Teacher Loan Forgiveness Act."

12 (vi) The act of June 26, 1992 (P.L.322, No.64), known as the
13 "Agriculture Education Loan Forgiveness Act."

14 (2) The State scholarship program established under the
15 Higher Education Scholarship Law shall be funded jointly by the
16 Commonwealth and the agency and shall be known as the
17 Legislative Education Assistance Program.

18 (3) The grants established under the Higher Education
19 Scholarship Law shall be known as Legislative Education
20 Assistance Program grants.

21 (4) The institutional assistance grants defined and
22 established under The Institutional Assistance Grants Act shall
23 be known as Legislative School Assistance grants.

24 (5) The assistance grant fund and Institutional Assistance
25 Grant Fund defined and referred to under The Institutional
26 Assistance Grants Act shall be known as the Legislative School
27 Assistance Grant Fund.

28 (6) All retained earnings of the agency in any fiscal year
29 shall be utilized in the following manner:

30 (i) The sum of sixteen million dollars (\$16,000,000)

1 annually shall be remitted by the agency to the authority for
2 administration of the Legislative Education Assistance Program
3 grants and the Legislative School Assistance Program grants. Any
4 amount not utilized by the authority for administration of these
5 programs shall be used to provide additional grants and
6 scholarships.

7 (ii) Annually, all remaining net income of the agency shall
8 be transferred to the authority for use in the Legislative
9 Education Assistance Program grants and the Legislative School
10 Assistance Program grants, subject to formulae established by
11 the General Assembly.

12 (iii) The agency shall submit a performance audit to the
13 Appropriations Committee of the Senate and the Appropriations
14 Committee of the House of Representatives for approval, and to
15 further provide for a determination of the amount of funding to
16 be remitted to the authority. This audit shall be conducted by
17 the Auditor General and shall be filed by the agency by December
18 31 of each year.

19 (7) The agency shall, at the request of the authority, enter
20 into an agreement whereby the agency shall provide support to
21 and otherwise administer for the authority in connection with
22 the authority's administration of the Legislative Education
23 Assistance Program and the Legislative School Assistance Program
24 identified in this section. The agency may charge the authority
25 a reasonable fee, not to exceed market rates for the performance
26 of such administrative services and support. Whether or not the
27 authority engages the agency for support and administrative
28 services, the agency shall make available, to the authority, on
29 a timely basis, the systems of the agency installed or utilized
30 at each eligible institution. These services shall be provided

1 by the agency to the authority for a reasonable fee not to
2 exceed customary fees charged in the student loan industry for
3 the performance of such activities to the authority.

4 (8) All Pennsylvania postsecondary institutions shall have
5 access to the agency's data on grant programs and related
6 information, at the same time and under the same terms and
7 conditions as any other similarly situated school in
8 Pennsylvania regardless of whether or not such institution
9 participates in or otherwise contracts with the agency for any
10 program or product offered or administered by the agency.

11 (9) The agency and the authority shall jointly have the
12 power to deny all financial assistance to any student as set
13 forth under section 8.2(a) of the Higher Education Scholarship
14 Law.

15 (10) The authority may contract with one or more private
16 entities in order to assist the authority in fulfilling its
17 duties under The Institutional Assistance Grants Act and the
18 administration of the Legislative Education Assistance Program
19 and the Legislative School Assistance Program.

20 (11) The authority may contract with the agency for systems
21 support and related services and for access to such agency's
22 network operating systems and other technical and administrative
23 assistance for a reasonable fee not to exceed customary fees
24 charged in the student loan industry for the performance of such
25 functions, in connection with the administration of the
26 Legislative Education Assistance Program and the Legislative
27 School Assistance Program.

28 (b) All operating costs that the agency incurs as a result
29 of the powers, duties and functions transferred to the authority
30 under this section shall continue to be paid from funds

1 transferred from the agency to the authority for that purpose.
2 The agency and the authority shall enter into an interagency
3 agreement for the transfer of such funds, which agreement shall
4 include a funding maintenance of effort requirement.

5 (c) The agency shall transfer all records, documents and
6 information necessary for the authority to perform the powers,
7 duties and functions transferred under this section.

8 Section 4. Section 11 of the act is amended to read:

9 Section 11. Applicability.--(a) The Pennsylvania Higher
10 Education Assistance Agency shall not be subject to any
11 provisions of the act of May 15, 1933 (P.L.624), known as the
12 "Banking Code."

13 (b) The Pennsylvania Higher Education Assistance Agency
14 shall be subject to the provisions of the act of June 21, 1957
15 (P.L.390, No.212), referred to as the Right-to-Know Law.

16 Section 5. The provisions of this act are severable. If any
17 provision of this act or its application to any person or
18 circumstance is held invalid, the invalidity shall not affect
19 other provisions or applications of this act which can be given
20 effect without the invalid provision or application.

21 Section 6. All acts and parts of acts are repealed insofar
22 as they are inconsistent with this act.

23 Section 7. This act shall take effect in 60 days.