

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2106 Session of
2019

INTRODUCED BY PUSKARIC, JAMES, BERNSTINE, ZIMMERMAN AND NEILSON,
DECEMBER 9, 2019

REFERRED TO COMMITTEE ON INSURANCE, DECEMBER 9, 2019

AN ACT

1 Amending the act of July 31, 1968 (P.L.738, No.233), entitled
2 "An act relating to establishment of an Industry Placement
3 Facility to make available basic property insurance against
4 fire and other perils for residential and business properties
5 located in certain areas of the Commonwealth of Pennsylvania
6 through the cooperative efforts of the Commonwealth and the
7 private property insurance industry; providing for a sharing
8 by the Commonwealth of insured losses resulting from riots
9 and other civil disorders through the formation of the
10 Pennsylvania Civil Disorder Authority; levying an assessment
11 on all policies of basic property insurance written in the
12 Commonwealth; and conferring powers and imposing duties upon
13 the Insurance Commissioner and upon certain property
14 insurers," repealing provisions relating to Pennsylvania
15 Civil Disorder Authority and to basic property insurance
16 assessment; and, in miscellaneous, further providing for
17 effective date.

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

20 Section 1. Articles III and IV of the act of July 31, 1968
21 (P.L.738, No.233), known as The Pennsylvania Fair Plan Act, are
22 repealed:

23 [ARTICLE III

24 Pennsylvania Civil Disorder Authority

25 Section 301. Formation of Authority.--In order to make

1 available to insurers which participate in the Industry
2 Placement Facility the reinsurance afforded by the Federal
3 reinsurance facility against losses resulting from riots and
4 civil disorders, there is hereby created a separate and distinct
5 body corporate and politic which shall be known as the
6 "Pennsylvania Civil Disorder Authority." The authority is hereby
7 constituted an instrumentality of the Commonwealth, and the
8 exercise by the authority of the powers conferred by this
9 article shall be deemed and held to be an essential governmental
10 function of the Commonwealth.

11 Section 302. Governing Body; Administration.--The powers of
12 the authority shall be exercised by a governing body (herein
13 called the "board") composed of the Attorney General of the
14 Commonwealth, the Secretary of Revenue, and the Insurance
15 Commissioner, who shall select from among themselves a chairman
16 and a vice-chairman. The Treasurer of the Commonwealth shall be
17 designated treasurer of the authority. The members of the board
18 shall not be liable personally on the bonds or other obligations
19 of the authority, and the rights of creditors shall be solely
20 against the authority. The members of the board shall receive no
21 compensation for their services as members but shall be entitled
22 to reimbursement for all necessary expenses incurred in
23 connection with the performance of their duties as members.

24 The authority may employ a secretary, an executive director,
25 its own counsel and legal staff, and such technical experts and
26 other agents and employes, permanent or temporary, as it may
27 require, and may determine the qualifications and fix the
28 compensation of such persons. The authority may delegate to one
29 or more of its agents or employes such of its powers as it shall
30 deem necessary to carry out the purposes of this act, subject

1 always to the supervision and control of the authority.

2 Section 303. Powers of Authority.--The authority shall
3 exercise public powers of the Commonwealth as an agency thereof,
4 including the following powers in addition to those herein
5 otherwise granted:

6 (1) To cooperate with any government or municipality as
7 herein defined;

8 (2) To act as agent of any government agency for the public
9 purposes set out in this act;

10 (3) To borrow funds from private lenders or from the
11 Commonwealth or the Federal government, as may be necessary for
12 the operation and work of the authority, and to carry out the
13 purposes and provisions of this act;

14 (4) To invest any funds held in reserves or sinking funds or
15 any funds not required for immediate disbursement, in such
16 investments as may be lawful for executors, administrators,
17 guardians, trustees and other fiduciaries under the laws of this
18 Commonwealth;

19 (5) To sue and be sued;

20 (6) To adopt a seal and to alter the same at pleasure;

21 (7) To make and execute contracts and other instruments
22 necessary or convenient to the exercise of the powers of the
23 authority, and any contract or instrument when signed by the
24 chairman or vice-chairman of the authority, or by an authorized
25 use of their facsimile signatures, and by the secretary or
26 assistant secretary or treasurer or assistant treasurer of the
27 authority, or by an authorized use of their facsimile
28 signatures, shall be held to have been properly executed for and
29 on its behalf;

30 (8) To make, to amend, and to repeal bylaws, rules,

1 regulations and resolutions;

2 (9) To do all acts and things necessary or convenient to
3 carry out the powers granted to it by this article or any other
4 acts: Provided, however, That the authority shall have no power,
5 at any time or in any manner, to pledge the credit or taxing
6 power of the Commonwealth, nor shall any of its obligations be
7 deemed to be obligations of the Commonwealth.

8 Section 304. Civil Disorder Authority Fund.--(a) The
9 authority shall establish a Civil Disorder Authority Fund
10 (hereinafter called "the Fund") which shall be available without
11 fiscal year limitation:

12 (1) To make such payments as may, from time to time, be
13 required by the Federal reinsurance facility;

14 (2) To pay proper administrative expenses of the authority;
15 and

16 (3) To repay such obligations of the authority, including
17 interest thereon, as may be incurred by the authority pursuant
18 to the provisions of this article.

19 (b) The fund shall be credited with:

20 (1) Such amounts as may be advanced to the fund from
21 whatever source in order to maintain the fund in a solvent
22 condition and able to satisfy its obligations;

23 (2) Interest which may be earned on investments of the fund;

24 (3) Moneys borrowed by the authority and deposited in the
25 fund; and

26 (4) Receipts from any other source which may, from time to
27 time, be credited to the fund.

28 (c) All moneys of the fund, from whatever source derived,
29 shall be paid to the treasurer of the authority and deposited by
30 him in one or more banks or trust companies, in one or more

1 special accounts, and each of such special accounts shall be
2 continuously secured by a pledge of direct obligations of the
3 United States of America or of the Commonwealth of Pennsylvania,
4 having an aggregate market value, exclusive of accrued interest,
5 at all times at least equal to the balance on deposit in such
6 account. Such securities shall either be deposited with the
7 treasurer or be held by a trustee or agent satisfactory to the
8 authority. All banks and trust companies are authorized to give
9 such security for such deposits. The moneys in said accounts
10 shall be paid out on the warrant or other order of the treasurer
11 of the authority or of such other person or persons as it may
12 authorize to execute such warrants or orders.

13 The Department of Revenue and the Auditor General of the
14 Commonwealth and their legally authorized representatives are
15 hereby authorized and empowered from time to time to examine the
16 accounts and books of the authority and any other matters
17 relating to its finances, operations and affairs.

18 Section 305. Reimbursement Payments to Federal Reinsurance
19 Facility; Necessity for Claim by Federal Reinsurance Facility;
20 Limitation on Amount of Payments.--(a) Payments under section
21 304(a)(1) hereof shall be made only upon direction of the
22 Treasurer of the Commonwealth and after receipt by him of a
23 claim from the Federal reinsurance facility. Prior to the making
24 of such payment the authority shall make such investigation as
25 it may deem appropriate in order to verify the correctness of
26 the claim made by the Federal reinsurance facility.

27 (b) The total amount of any such payments made during any
28 calendar year shall not exceed five per cent of the aggregate
29 property insurance premiums earned in the Commonwealth during
30 the preceding calendar year on those lines of insurance

1 reinsured by the Federal reinsurance facility in the
2 Commonwealth during the current year.

3 Section 306. Bonds of Authority.--(a) Within thirty days
4 following receipt of a direction from the Treasurer of the
5 Commonwealth to make payment of a claim to the Federal
6 reinsurance facility, the authority shall offer to sell bonds,
7 the aggregate principal amount of which shall be adequate to pay
8 the total amount of the claim received from the Federal
9 reinsurance facility, subject to the limitation contained in
10 section 305(b) above, plus the reasonable expenses of the sale,
11 due consideration having been first given to the moneys at that
12 time in the fund and available for payment of the claim of the
13 Federal reinsurance facility.

14 (b) The proceeds of the sale of such bonds shall be paid
15 into the fund and shall be used to satisfy the claim of the
16 Federal reinsurance facility which occasioned the sale of such
17 bonds; any amount remaining after satisfaction of such claim
18 shall be held in the fund and may be used for any of the
19 purposes set forth in section 304.

20 (c) The bonds of the authority shall be authorized by
21 resolution of the board or by and pursuant to an indenture of
22 trust and shall be of such series, bear such date or dates, be
23 stated to mature at such time or times, not exceeding thirty
24 years from their respective dates, be issued as serial or term
25 bonds, or as part serial and part term bonds, or any combination
26 thereof, or as a single bond payable in installments, bear
27 interest payable annually, semi-annually or quarterly, be in
28 such denominations, be in such form, either as negotiable
29 commercial paper, or as investment securities in bearer or
30 registered form, carry such registration, exchangeability and

1 interchangeability privileges, be payable in such medium of
2 payment and at such place or places, be subject to such terms of
3 redemption at such prices not exceeding one hundred six per cent
4 of the principal amount thereof, and be entitled to such
5 priorities in the revenues or receipts of authority as such
6 resolution or indenture may provide. The bonds shall be signed
7 manually or by facsimile by such officers as the authority shall
8 determine, and coupon bonds shall have attached thereto interest
9 coupons bearing the facsimile signature of the treasurer of the
10 authority, all as may be prescribed in such resolution or
11 indenture. No bond shall be issued or delivered without at least
12 one manual signature, which may be that of an officer of the
13 fiscal agent or of the trustee under the relevant resolution or
14 indenture. Any such bonds may be issued and delivered
15 notwithstanding that one or more of the officers signing such
16 bonds, or the treasurer whose facsimile signature shall be upon
17 the coupons or any thereof, shall have ceased to be such officer
18 or officers at the time when such bonds shall actually be
19 delivered.

20 (d) Such bonds shall be sold to the highest responsible
21 bidder or bidders proposing the lowest net interest cost to the
22 authority, determined by computing the interest on the bonds to
23 their stated maturity dates and adding thereto the discount or
24 subtracting therefrom the premium specified in such bid, after
25 public notice, by two advertisements in not less than three nor
26 more than five newspapers of large general circulation in
27 different parts of the Commonwealth, the first advertisement to
28 be published not less than twenty days and the second not less
29 than five days before the day fixed for the opening of bids. No
30 bonds shall be sold if the net interest cost, computed to stated

1 maturity dates of the bonds, of the money received for any issue
2 of such bonds shall exceed six per cent a year. The
3 advertisement of sale shall contain a general description of the
4 bonds, the manner, place and time of the sale, or the time limit
5 for the receipt of proposals, the name of the officer to whom,
6 or to whose designee, bids or proposals shall be delivered, and
7 a statement of the terms and conditions of sale: Provided,
8 however, That any of said bonds may be sold to the State
9 Employees' Retirement Board, or to any other custodial board or
10 fund, or to State Employees' Retirement Fund, or by private
11 placement with a group of not more than twenty-five ultimate
12 investors who purchase for investment and not with a view to
13 distribution, without advertisement or competitive bidding.
14 Pending the preparation of the definitive bonds, interim
15 receipts or temporary bonds may be issued to the purchaser or
16 purchasers of such bonds and may contain such terms and
17 conditions as the authority may determine.

18 (e) Any resolution or indenture authorizing any bonds may
19 contain provisions which shall be part of the contract with the
20 holders thereof as to:

21 (1) Pledging the full faith and credit of the authority (but
22 not of the Commonwealth or any political subdivision thereof)
23 for such bonds or restricting the same to all or any of the
24 revenues or receipts of the authority;

25 (2) The terms and provisions of the bonds;

26 (3) The setting aside of reserves or sinking funds and the
27 regulation and disposition thereof;

28 (4) Any terms and provisions for the security of the bonds
29 or under which the same may be issued;

30 (5) Any other or additional agreements with the holder of

1 the bonds.

2 (f) The authority may enter into any indentures of trust, or
3 other agreements with any bank or trust company or other person
4 or persons in the United States having power to enter into the
5 same, or may designate any such as fiscal agent under a bond
6 resolution, in order to provide for the security for such bonds,
7 and may assign and pledge all or any of the revenues or receipts
8 of the authority thereunder. Such indenture, resolution, or
9 other agreement may contain such provisions as may be customary
10 in such instruments or as the authority may authorize, including
11 provisions as to:

12 (1) The application of funds and the safeguarding of funds
13 on hand, invested or on deposit;

14 (2) The rights and remedies of said trustees or fiscal agent
15 and the holders of the bonds (which may include restrictions
16 upon the individual right of action of such bondholders); and

17 (3) The terms and provisions of the bonds or the resolutions
18 or indentures authorizing the issuance of the same.

19 Section 307. Remedies of Bondholder.--(a) The rights and
20 the remedies herein conferred upon or granted to the bondholders
21 shall be in addition to and not in limitation of any rights and
22 remedies lawfully granted to such bondholders by the resolution
23 or indenture providing for the issuance of bond. If the
24 authority shall default in the payment of the interest on any of
25 the bonds after the same shall become due, and such default
26 shall continue for a period of thirty days, or if the authority
27 shall default in the payment of principal after the same shall
28 become due whether at maturity or upon any unrevoked call for
29 redemption, or if the authority shall fail or refuse to comply
30 with the provisions of this act or shall default in any

1 agreement made with the holders of the bonds, the holders of
2 twenty-five per cent in aggregate principal amount of bonds then
3 outstanding under the indenture or bond resolution involved, by
4 instrument or instruments filed in the Office of the Recorder of
5 Deeds of the County of Dauphin and proved or acknowledged in the
6 same manner as a deed to be recorded, may (except as such right
7 may be limited under the provisions of any indenture or other
8 agreement as aforesaid) appoint a trustee to represent the
9 bondholders for the purposes herein provided. Such trustee or
10 any trustee under any indenture or the fiscal agent under any
11 resolution or other agreement may, and upon written request of
12 the holders of twenty-five per cent (or such other percentage as
13 may be specified in any resolution, indenture or other agreement
14 aforesaid) in principal amount of the bonds then outstanding
15 under such indenture or resolution shall, in his or its own
16 name--

17 (1) By mandamus or other suit, action or proceeding at law
18 or in equity, enforce all rights of the bondholders, including
19 the right to require the authority to carry out any agreement as
20 to, or pledge of, the revenues or receipts of the authority and
21 to require the authority to carry out any other agreements with,
22 or for the benefit of, the bondholders, and to perform its
23 duties under this act;

24 (2) Bring suit upon the bonds;

25 (3) By action or suit in equity, require the authority to
26 account as if it were the trustees of an express trust for the
27 bondholders;

28 (4) By action or suit in equity, enjoin any acts or things
29 which may be unlawful, or in violation of the rights of the
30 bondholders; or

1 (5) By notice in writing to the authority, declare all bonds
2 due and payable and, if all defaults shall be made good, then
3 with the consent of the holders of twenty-five per cent (or such
4 other percentage as may be specified in any indenture,
5 resolution or other agreement aforesaid) of the principal amount
6 of the bonds then outstanding, to annul such declaration and its
7 consequences.

8 ARTICLE IV

9 Basic Property Insurance Assessment

10 Section 401. Basic Property Insurance Assessment.--In order
11 to provide for the payment of the principal of and interest on
12 bonds of the authority, issued pursuant to section 306 of this
13 act, an assessment is hereby levied on each insurer which is a
14 member of the Industry Placement Facility. The amount of such
15 assessment shall be two per cent of the aggregate gross premiums
16 received by such insurer for policies of basic property
17 insurance, or any component thereof, including homeowners and
18 commercial multiple peril policies, written within this
19 Commonwealth.

20 Section 402. Payment to Pennsylvania Civil Disorder
21 Authority.--Every insurer shall, on or before the fifteenth day
22 of April of each year, compute and pay to the Treasurer of the
23 Pennsylvania Civil Disorder Authority the aggregate assessments
24 due upon the gross premiums received by it for basic property
25 insurance written within the Commonwealth during the calendar
26 year immediately preceding said payment date. Said aggregate
27 assessments shall bear interest at the rate of six per cent per
28 annum from the date the same are due and payable to the
29 authority until payment is made.

30 Section 403. Reports and Statements.--The commissioner may

1 at any time require any insurer to furnish him with such
2 information as he, in his discretion, may deem necessary in
3 order to determine whether or not such insurer is complying with
4 the provisions of this article.

5 Section 404. Effective Date.--The assessment provided for
6 herein shall be collectible on all policies of basic property
7 insurance, or any component thereof, including homeowners and
8 commercial multiple peril policies, written on and after the
9 thirtieth day following issuance by the authority of its bonds
10 pursuant to section 306 of this act.

11 Section 405. Termination of Assessment.--The assessment
12 imposed by this article shall remain in full force and effect
13 until all bonds issued by the Pennsylvania Civil Disorder
14 Authority have been retired, and shall thereafter terminate at
15 such time and upon such terms and conditions as shall be
16 specified by the board of the authority.]

17 Section 2. Section 502(b) of the act is amended to read:

18 Section 502. Effective Date.--* * *

19 (b) [(1)] Policies issued pursuant to the direction of and
20 other obligations incurred by the Industry Placement Facility
21 shall not be impaired by the termination of the Federal
22 reinsurance facility and such Industry Placement Facility shall
23 be continued for the purpose of servicing such policies and
24 performing such obligations. [;

25 (2) All bonds issued and other obligations incurred by the
26 Pennsylvania Civil Disorder Authority shall not be impaired by
27 the termination of the Federal reinsurance facility and such
28 authority shall be continued for the purpose of servicing such
29 bonds and performing such obligations; and

30 (3) The collection of the basic property insurance

1 assessment shall terminate as provided in section 405 of this
2 act.]

3 Section 3. This act shall take effect in 60 days.