

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1319 Session of  
2003

INTRODUCED BY LEVDANSKY, MAY 5, 2003

REFERRED TO COMMITTEE ON COMMERCE, MAY 5, 2003

AN ACT

1 Amending the act of August 23, 1967 (P.L.251, No.102), entitled,  
2 as amended, "An act providing for the incorporation as public  
3 instrumentalities of the Commonwealth and as bodies corporate  
4 and politic of industrial and commercial development  
5 authorities for municipalities, counties and townships;  
6 prescribing the rights, powers and duties of such authorities  
7 hereafter incorporated; authorizing such authorities to  
8 acquire, by gift or purchase, to construct, improve and  
9 maintain industrial, specialized, or commercial development  
10 projects including projects for the elimination or prevention  
11 of blight and the control of air and water pollution, and to  
12 borrow money and issue bonds therefor; providing for the  
13 payment of such bonds and giving security therefor, and  
14 prescribing the rights of the holders of such bonds;  
15 authorizing the lease or sale of industrial, specialized, or  
16 commercial development projects to industrial, specialized,  
17 or commercial enterprises; authorizing any county,  
18 municipality or township to transfer or convey to such  
19 authorities, any facilities or property available for  
20 industrial, specialized, or commercial development projects;  
21 exempting the property and securities of such authorities  
22 from taxation; authorizing such authorities to enter into  
23 contracts with and to accept grants from the Federal  
24 Government or any agency thereof; and providing for approval  
25 by the Secretary of Commerce of the proceedings relating to  
26 industrial, specialized, or commercial development projects  
27 of such authorities," further providing for definitions, for  
28 financing authority indebtedness and financing and for  
29 prohibitions; establishing the Commonwealth Tax Increment  
30 Financing Loan Guarantee Program and the Pennsylvania  
31 Opportunity Fund Oversight Committee; providing for  
32 reporting; making an appropriation; and making editorial  
33 changes.

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

3       Section 1. The definitions of "department" and "secretary"  
4 in section 3 of the act of August 23, 1967 (P.L.251, No.102),  
5 known as the Economic Development Financing Law, amended  
6 December 17, 1993 (P.L.490, No.74), are amended and the section  
7 is amended by adding a definition to read:

8       Section 3. Definitions.--As used in this act:

9       \* \* \*

10       "Department" means the Department of [Commerce] Community and  
11 Economic Development of the Commonwealth.

12       \* \* \*

13       "Oversight committee" means the Pennsylvania Opportunity Fund  
14 Oversight Committee established in section 15.4.

15       \* \* \*

16       "Secretary" means the Secretary of [Commerce] Community and  
17 Economic Development of the Commonwealth.

18       \* \* \*

19       Section 2. Sections 6.3(a), 6.4 and 15.2 of the act, amended  
20 or added December 17, 1993 (P.L.490, No.74), are amended to  
21 read:

22       Section 6.3. Financing Authority Indebtedness.--(a) The  
23 financing authority shall have the power and is hereby  
24 authorized to issue its limited obligation revenue bonds and  
25 other types of financing as in the judgment of the financing  
26 authority shall be necessary to provide sufficient funds for any  
27 related or unrelated projects: (i) provided that the issuance by  
28 the financing authority of taxable or tax-exempt bonds on behalf  
29 of projects comprising industrial facilities, commercial  
30 facilities, pollution control facilities, energy conversion

1 facilities, energy producing facilities and disaster relief  
2 project facilities, other than projects to be funded by the  
3 oversight committee, shall have been authorized by an industrial  
4 and commercial development authority or a group of industrial  
5 and commercial development authorities or by an industrial  
6 development agency or a group of industrial and development  
7 agencies; (ii) further provided that the financing authority may  
8 issue taxable or tax-exempt bonds on behalf of interagency  
9 projects other than projects to be funded by the oversight  
10 committee only if the applicant has first applied to the  
11 Pennsylvania Infrastructure Investment Authority for financing  
12 under the provisions of the act of March 1, 1988 (P.L.82,  
13 No.16), known as the "Pennsylvania Infrastructure Investment  
14 Authority Act," and the Pennsylvania Infrastructure Investment  
15 Authority in writing refers the applicant to the financing  
16 authority to finance all or part of the interagency project in  
17 accordance with this act; and (iii) further provided that the  
18 issuance by the financing authority of taxable or tax-exempt  
19 bonds for a public facility other than projects to be funded by  
20 the oversight committee, interagency projects and projects for  
21 roads and transportation facilities and transportation systems  
22 of every kind shall have been authorized by a municipality,  
23 municipal authority or Commonwealth agency and only if both the  
24 applicant and the financing authority have determined that the  
25 cost of obtaining the financing for the public facility will be  
26 reduced through the issuance of bonds through the financing  
27 authority. For purposes of the determination required in this  
28 subsection, any financing for a public facility that the  
29 financing authority reasonably believes could have received a  
30 rating of "A" or better from either Moody's Investors Service or

1 Standard & Poor's Corporation shall be presumed not to be  
2 eligible for financing by the financing authority. The financing  
3 authority is authorized and empowered to use the proceeds of any  
4 bonds issued for the making of loans, purchasing loans,  
5 mortgages, security interests or loan participations and paying  
6 all incidental expenses in connection therewith, paying expenses  
7 of authorizing and issuing the bonds, paying interest on the  
8 bonds until revenues thereof are available in sufficient amounts  
9 and funding the reserves as the financing authority deems  
10 necessary and desirable.

11 \* \* \*

12 Section 6.4. Financing Authority Loans.--(a) The financing  
13 authority shall ascertain to its satisfaction that:

14 (1) Firm commitments satisfactory to the financing authority  
15 have been obtained from responsible financial sources, which may  
16 include a Federal agency, project applicant or the project user,  
17 for the portion of project costs in excess of any loan or other  
18 financing requested from the financing authority.

19 (2) [A] Except for projects to be funded by the oversight  
20 committee, a firm commitment satisfactory to the financing  
21 authority from the project applicant or project user has been  
22 obtained to lease or use the project after acquisition is  
23 completed.

24 (3) [The] Except for projects to be funded by the oversight  
25 committee, the project user may reasonably be expected to comply  
26 with the terms of such lease or use.

27 (4) [The] Except for projects to be funded by the oversight  
28 committee, the project complies with all rules and regulations  
29 of the financing authority, if any.

30 (b) In addition to other provisions of this section limiting

1 the power of the financing authority to make loans or provide  
2 other financing in respect to a particular project, no funds of  
3 the financing authority shall be used in respect of any project  
4 if the financing authority would be required to operate, service  
5 or maintain the project pursuant to any lease or other agreement  
6 except upon foreclosure or except upon the occurrence of a  
7 default in the payment or terms of any loan made. Nothing shall  
8 prevent the financing authority from transferring such property  
9 to the project applicant, project user or either of their  
10 designees at the end of the term of such financing.

11 Section 15.2. Prohibition.--(a) Except as provided herein,  
12 no Commonwealth agency under the control of the executive branch  
13 shall be a project applicant under this act[. Operating expenses  
14 of any Commonwealth agency under the control of the executive  
15 branch are not an eligible project cost.] except that the  
16 department may be a project applicant for a project funded by  
17 the oversight committee.

18 (b) The Department of Public Welfare may be a project  
19 applicant to provide for the conversion of medical assistance  
20 services from a fee-for-service basis to a prepaid managed-care  
21 basis subject to prior approval of this conversion mechanism by  
22 the Health Care Financing Agency of the Federal Department of  
23 Health and Human Services and prior notice of project details  
24 and Federal approval to the chairman and minority chairman of  
25 the Senate Appropriations Committee and the chairman and  
26 minority chairman of the House Appropriations Committee. Maximum  
27 term of the bonds, notes or other evidences of indebtedness  
28 issued for this project shall be five years.

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

30 Section 15.3. Commonwealth Tax Increment Financing Loan

1 Guarantee Program.--The Commonwealth Tax Increment Financing  
2 Loan Guarantee Program shall provide loan guarantees to issuers  
3 of bonds or other indebtedness for tax increment financing in  
4 accordance with the act of July 11, 1990 (P.L.465, No.113),  
5 known as the "Tax Increment Financing Act."

6 (1) The oversight committee may establish a loan guarantee  
7 procedure for the purpose of this program.

8 (2) The oversight committee may commit up to one hundred  
9 million dollars (\$100,000,000) in first round funds to the loan  
10 guarantee procedure for this program.

11 (3) Before any project is approved under this clause, the  
12 oversight committee shall develop written guidelines.

13 Section 15.4. Oversight Committee.--(a) There is  
14 established in the financing board the Pennsylvania Opportunity  
15 Fund Oversight Committee. The oversight committee shall consist  
16 of the following:

17 (1) The Governor.

18 (2) The State Treasurer.

19 (3) The Secretary of the Budget.

20 (4) The secretary.

21 (5) The Secretary of Banking.

22 (6) Four members of the General Assembly appointed as  
23 follows:

24 (i) One member appointed by the President pro tempore of the  
25 Senate.

26 (ii) One member appointed by the Minority Leader of the  
27 Senate.

28 (iii) One member appointed by the Speaker of the House of  
29 Representatives.

30 (iv) One member appointed by the Minority Leader of the

House of Representatives.

(7) Four members appointed by the Governor.

(b) Terms of members shall be as follows:

(1) A member under subsection (a)(6) shall serve at the pleasure of the appointing authority.

(2) Two members under subsection (a)(7) shall serve terms of four years from appointment and until a successor is appointed, and two members under subsection (a) shall serve terms of two years from appointment and until a successor is appointed.

(c) Members of the oversight committee shall serve without compensation but shall be reimbursed for actual and reasonable expenses incurred in the performance of their official duties.

(d) The Governor shall serve as chairperson of the oversight committee, or the Governor may designate another member to serve as chairperson. The members of the oversight committee shall select one member to serve as secretary.

(e) A designee designated by a member under subsection (a)(1) through (6) may vote and otherwise act on behalf of the member. The designation must be in writing and be delivered to the oversight committee. The designation shall continue in effect until revoked or amended in writing.

(f) A majority of the members of the oversight committee then serving shall constitute a quorum of the oversight committee. Only a member or a designee who is physically present at a meeting or able to participate fully in the deliberations by appropriate telecommunications means shall count toward a quorum of the oversight committee.

Section 15.5. Powers and Duties of Oversight Committee.--(a) The oversight committee shall have the powers and duties delegated to it by the financing authority. In addition, the

1 oversight committee shall have the following powers and duties:

2 (1) To authorize and direct the issuance of bonds by the  
3 financing authority, which, upon authorization by the oversight  
4 committee, shall be deemed for all purposes to have been issued  
5 by resolution of the financing authority.

6 (2) To control and manage, invest and reinvest money  
7 received from bond financing, from repayments and redeposits or  
8 from any other source derived and dedicated for use in programs  
9 financed by the oversight committee and for all expenses  
10 associated with the program. Funds may be deposited by the  
11 oversight committee in banks or trust companies in special  
12 accounts for use by the oversight committee as set forth in this  
13 clause, including the use of interest earned on the accounts.  
14 Money in the accounts shall be paid out on order of the  
15 oversight committee. Funds deposited by the oversight committee  
16 in special accounts in banks or trust companies may be prudently  
17 invested in any of the following:

18 (i) Obligations of the United States Government, its  
19 agencies and instrumentalities, which have a liquid market with  
20 a readily determinable market value.

21 (ii) Certificates of deposit and other evidences of deposit  
22 at financial institutions, bankers' acceptances and commercial  
23 paper rated in the highest tier, for example, A1, P1, F1 or D1  
24 or higher, by a nationally recognized rating agency.

25 (iii) Obligations of State and local governments, and of  
26 public authorities which are rated in one of the top three  
27 rating categories by a nationally recognized rating agency.

28 (iv) Repurchase agreements underlying purchased securities  
29 of which consist of investments set forth in clause (1), (2) or  
30 (3).



1     (v) Money market funds:

2     (A) which are regulated by the Securities Exchange  
3     Commission having aggregate assets of at least fifty thousand  
4     dollars (\$50,000) on the date of investment; and

5     (B) the portfolio of which consists only of dollar-  
6     denominated securities.

7     (3) To hold, purchase, sell, lend, assign, transfer or  
8     dispose of any category of securities and investments, in which  
9     money dedicated for use in programs financed by the oversight  
10    committee has been invested, and the proceeds of such  
11    investments.

12    (4) To make equity capital available to early to mid-stage  
13    companies located within this Commonwealth that operate within  
14    targeted growth segments of the economy and to provide for the  
15    repayment of such capital.

16    (5) To make loans and other capital available to private  
17    developers, redevelopers or other real estate development  
18    entities engaged in real estate projects for redevelopment or  
19    revitalization of real estate located within this Commonwealth  
20    and to provide for the repayment of such loans and investments.

21    (6) To make loans and grants to assist in the acquisition  
22    and preparation of sites for future development. Loans and  
23    grants may be made by providing funds to the department to  
24    administer on behalf of the oversight committee.

25    (7) To use funds to guarantee tax increment financing  
26    projects.

27    (8) To make loans or to guarantee loans to promote  
28    agriculture and tourism in this Commonwealth.

29    (b) Actions taken by the oversight committee shall not be  
30    subject to review by the financing board.

1     (c) In the exercise of its powers and duties, the oversight  
2     committee shall exercise that degree of judgment, skill and care  
3     under the circumstances then prevailing that persons of  
4     prudence, discretion and intelligence, that are familiar with  
5     investment matters, exercise in the management of their own  
6     affairs, not in regard to speculation but in regard to permanent  
7     disposition of the funds, considering the probable income to be  
8     derived from the investments and the probable safety of their  
9     capital.

10    (d) The members of the oversight committee and their  
11    professional personnel shall stand in a fiduciary relationship  
12    to the Commonwealth and its citizens regarding the investments  
13    of the money of the fund and shall not profit, either directly  
14    or indirectly, with respect thereto.

15    Section 15.6. Annual Report.--By November 30, 2004, and  
16    annually thereafter, the oversight committee shall submit a  
17    report to the Governor and to the chair and minority chair of  
18    the Appropriations Committee of the Senate and the chair and  
19    minority chair of the Appropriations Committee of the House of  
20    Representatives. The report shall provide an analysis of the  
21    status of the current investments and transactions made by the  
22    oversight committee or the department over the previous fiscal  
23    year for the program.

24    Section 15.7. Reporting of Tax Increment Financing  
25    Projects.--The department is authorized to gather information  
26    relating to the issuance of tax increment financing bonds within  
27    this Commonwealth for projects that are in existence at the time  
28    of the effective date of this section and for projects that come  
29    into existence thereafter. Issuers of tax increment financing  
30    bonds are directed to provide information to the department upon

1 request. The department is authorized to take whatever steps are  
2 necessary to obtain the information. The department shall  
3 provide the information it has collected to the oversight  
4 committee for inclusion in the annual report under section 15.6.

5       Section 4. The sum of \$12,000,000, or as much thereof as may  
6 be necessary, is hereby appropriated to the Pennsylvania  
7 Economic Development Financing Authority and allocated to the  
8 Pennsylvania Opportunity Fund Oversight Committee for the fiscal  
9 year July 1, 2003, to June 30, 2004, to carry out the provisions  
10 of this act and any other act which confers financing authority  
11 upon the committee.

12       Section 5. This act shall take effect July 1, 2003, or  
13 immediately, whichever is later.