

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1257 Session of
2011

INTRODUCED BY EARLL, M. WHITE, MENSCH, ARGALL, FOLMER AND WAUGH,
SEPTEMBER 21, 2011

REFERRED TO COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT,
SEPTEMBER 21, 2011

AN ACT

1 Amending Titles 12 (Commerce and Trade) and 64 (Public
2 Authorities and Quasi-Public Corporations) of the
3 Pennsylvania Consolidated Statutes, providing for the Liberty
4 Financing Authority; imposing duties on the Department of
5 Community and Economic Development; and making related
6 repeals.

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

9 Section 1. Chapters 23 and 29 of Title 12 of the
10 Pennsylvania Consolidated Statutes are repealed:

11 [CHAPTER 23

12 SMALL BUSINESS FIRST

13 Sec.

14 2301. Scope.

15 2302. Definitions.

16 2303. Establishment.

17 2304. Fund and accounts.

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3 2309. Pollution prevention assistance loans.
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6 2312. Limitations.
7 § 2301. Scope.

8 This chapter relates to the Small Business First Program.

9 § 2302. Definitions.

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

13 "Agricultural processor." A person that adds value by
14 subjecting one or more farm commodities to a process of
15 manufacture, development or preparation for sale or a person
16 that converts a farm product into a marketable form.

17 "Agricultural producer." A person involved in the management
18 and use of a normal agricultural operation for the production of
19 a farm commodity.

20 "Apparel products." Products manufactured, woven, cut, sewn
21 or otherwise similarly processed by mechanical or human effort
22 from fabrics, leather or cloth and made for use as clothing,
23 shoes or other attire.

24 "Applicant." A person that applies for a loan in accordance
25 with this chapter.

26 "Area loan organization." A local development district, an
27 industrial development agency organized and existing under the
28 act of May 17, 1956 (1955 P.L.1609, No.537), known as the
29 Pennsylvania Industrial Development Authority Act, or any other
30 nonprofit economic development organization certified by the

department as possessing the qualifications necessary to
evaluate and administer loans made under this chapter.

"Capital development project." Land, buildings, equipment
and machinery and working capital which is acquired,
constructed, renovated or used by a small business in accordance
with any of the following:

(1) As part of a for-profit project or venture not of a
mercantile or service-related nature, except for hospitality
industry projects.

(2) As part of an effort to:

(i) bring a small business into compliance with
Federal or State environmental laws or regulations;

(ii) complete an approved remediation project; or

(iii) permit a small business to adopt generally
acceptable pollution prevention practices.

(3) As part of an effort to provide assistance to a
small business that is a recycler of municipal or commercial
waste or that is a manufacturer using recycled municipal or
commercial waste materials.

(4) As part of an effort to assist a small business with
defense conversion activities.

(5) As part of a for-profit project or venture to
manufacture products to be exported out of the United States
by a small business which is not of a mercantile or service-
related nature, except for export-related services and
international export-related mercantile ventures or advanced
technology and computer-related services and mercantile
ventures and which will increase this Commonwealth's national
or international market shares.

(6) As part of a for-profit project or venture that

1 meets the requirements of section 2308 (relating to loans in
2 distressed communities)

3 (7) As part of an effort to assist in the start-up or
4 expansion of a for-profit or not-for-profit child day-care
5 center subject to licensure by the Commonwealth.

6 "Child day-care center." Any premises in which child day
7 care is provided simultaneously for seven or more children who
8 are not related to the provider.

9 "Community development institution." Any of the following:

10 (1) An area loan organization for a distressed
11 community.

12 (2) A community development financial institution
13 located in a distressed community and approved by the
14 department.

15 "Distressed community." A community which has any of the
16 following:

17 (1) A census tract or other specifically defined
18 geographic area in which there is any of the following:

19 (i) A median income below 80% of the median income
20 for the United States or this Commonwealth.

21 (ii) Twenty percent or more of the population is
22 below the poverty level by family size published by the
23 Bureau of the Census.

24 (iii) An unemployment rate 50% higher than the
25 national average.

26 (2) An area which is designated a subzone, expansion
27 subzone or improvement subzone under the act of October 6,
28 1998 (P.L.705, No.92), known as the Keystone Opportunity Zone
29 and Keystone Opportunity Expansion Zone Act.

30 (3) Any other geographic area designated by the

department as distressed. The designation shall be published in the Pennsylvania Bulletin.

"EDA loan." A loan made under this chapter utilizing funds made available to the department under the Public Works and Economic Development Act of 1965 (Public Law 89-136, 42 U.S.C. § 3121 et seq.).

"Ex-Im Bank." The Export-Import Bank of the United States.

"Export activity." An activity undertaken by a person within this Commonwealth related to exports.

"Export business." A person that is engaged in a for-profit enterprise involving export activities and that employs 250 or fewer individuals.

"Exports." Goods or services to be sold or performed outside the United States.

"Farm commodity." Any Pennsylvania-grown agricultural, horticultural, aquacultural, vegetable, fruit and floricultural product of the soil, livestock and meats, wools, hides, furs, poultry, eggs, dairy products, nuts, mushrooms, honey products and forest products.

"Fund." The Small Business First Fund continued under section 2304 (relating to fund and accounts).

"Hazardous substance." Any element, compound or material which is any of the following:

(1) Regulated as a hazardous air pollutant under section 6.6 of the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act.

(2) Defined as a hazardous waste under section 103 of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

(3) Regulated under the act of December 7, 1990

(P.L.639, No.165), known as the Hazardous Material Emergency Planning and Response Act.

"Hospitality industry project." A for-profit project or venture which involves a small business that operates a hotel, motel or other lodging facility and that employs at least five full-time equivalent employees at the time an application is submitted to the department for financing. The term includes a for-profit project or venture which involves a small business that operates a restaurant or food service operation open to the public, that has been in continuous operation for at least five years and that employs at least five full-time equivalent employees at the time an application is submitted.

"Insurance policy." An export credit insurance policy for small businesses offered by the Export-Import Bank of the United States.

"Natural disaster." As defined in 35 Pa.C.S. § 7102 (relating to definitions).

"Normal agricultural operation." As defined in section 2 of the act of June 10, 1982 (P.L.454, No.133), entitled "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances."

"Pollution prevention." The reduction or elimination of pollution at its source. The term does not include any of the following:

(1) A substitution of one hazardous or toxic substance for another which will cause an increased risk to the environment or to human health.

(2) A cross-media transfer.

(3) A delisting of a hazardous waste or toxic chemical.

"Pollution prevention assistance agency." Any of the

1 following:

2 (1) An area loan organization.

3 (2) An industrial resource center created pursuant to
4 the act of June 22, 2001 (P.L.400, No.31), known as the
5 Industrial Resources Center Partnership Act.

6 "Pollution prevention infrastructure." A capital development
7 project which permits a small business to adopt or install
8 pollution prevention equipment or processes to:

9 (1) Reduce or reuse raw materials onsite.

10 (2) Reduce the production of waste.

11 (3) Reduce energy consumption.

12 "Program." The Small Business First Program established
13 under section 2303 (relating to establishment).

14 "Reuse." Use of a product or component in its original form
15 more than once.

16 "Small business." A person that is engaged in a for-profit
17 enterprise and that employs 100 or fewer individuals. The term
18 includes the following:

19 (1) An enterprise located in a small business incubator
20 facility.

21 (2) An agricultural processor.

22 (3) An agricultural producer.

23 (4) An enterprise which manufactures apparel products.

24 (5) An enterprise which is a for-profit or not-for-
25 profit child day-care center subject to licensure by the
26 Commonwealth.

27 "Working capital." Capital used by a small business for
28 operations, excluding fixed assets and production machinery and
29 equipment.

30 § 2303. Establishment.

1 There is established within the department a program to be
2 known as the Small Business First Program. The program shall be
3 administered by the department and provide loans to eligible
4 persons for certain projects which encourage job-creating and
5 job-preserving economic development within this Commonwealth.

6 § 2304. Fund and accounts.

7 (a) Fund.--The Small Business First Fund, created under
8 section 1302(a) of the act of June 29, 1996 (P.L.434, No.67),
9 known as the Job Enhancement Act, is continued. The Treasury
10 Department shall credit the following to the fund:

11 (1) Appropriations made by the General Assembly to the
12 department for the program.

13 (2) Federal funds made available under the Public Works
14 and Economic Development Act of 1965 (Public Law 89-136, 42
15 U.S.C. § 3121 et seq.) or any other Federal statute,
16 regulation or program for the program.

17 (3) Payments from recipients of loans made from the
18 fund.

19 (4) Payments from recipients of loans made under the
20 former act of July 2, 1984 (P.L.545, No.109), known as the
21 Capital Loan Fund Act.

22 (5) Interest income derived from investment of the money
23 in the fund.

24 (6) Any other deposits, payments or contributions from
25 any other source made available to the department for the
26 program.

27 (b) Pollution prevention assistance.--The Pollution
28 Prevention Assistance Account, created under the act of June 29,
29 1996 (P.L.434, No.67), known as the Job Enhancement Act, is
30 continued. The Treasury Department shall credit the following to

1 this account:

2 (1) Appropriations made by the General Assembly to the
3 department for pollution prevention assistance.

4 (2) Payments from recipients of loans made from the
5 Pollution Prevention Assistance Account.

6 (3) Transfers from the Hazardous Sites Cleanup Fund as
7 established in section 602.3 of the act of March 4, 1971
8 (P.L.6, No.2), known as the Tax Reform Code of 1971.

9 (4) Interest income derived from investment of the money
10 in the Pollution Prevention Assistance Account.

11 (5) Any other deposits, payments or contributions from
12 any other source made available to the department for
13 pollution prevention assistance.

14 (c) Use of fund.--

15 (1) Money in the fund may be used as follows:

16 (i) By the department to make loans in accordance
17 with this chapter and for administrative costs of the
18 department in administering the program.

19 (ii) By area loan organizations for administrative
20 costs associated with the program which are approved by
21 the department.

22 (2) Money from the fund derived from appropriations
23 specified for export financing assistance may be deposited by
24 the department in banks or trust companies in special
25 accounts. The special accounts must be continuously secured
26 by a pledge of direct obligations of the United States or of
27 the Commonwealth having an aggregate market value, exclusive
28 of accrued interest, at least equal to the balance on deposit
29 in the account. The securities shall be deposited with the
30 department to be held by a trustee or agent satisfactory to

1 the department. Banks and trust companies are authorized to
2 give security under this paragraph. Money in these special
3 accounts shall be paid out on order of the department.

4 (d) Use of Pollution Prevention Assistance Account.--Money
5 in the Pollution Prevention Assistance Account may be used by
6 the department to provide loans to small businesses for the
7 adoption or installation of pollution-prevention or energy-
8 efficient equipment or processes in accordance with section 2309
9 (relating to pollution prevention assistance loans).

10 § 2305. Department responsibilities.

11 (a) General rule.--The department shall do all of the
12 following:

13 (1) Administer the program.

14 (2) Establish written guidelines as necessary. Any
15 guidelines established shall be included in the report
16 required by Chapter 3 (relating to economic development
17 financing strategy).

18 (3) Deposit payments made by recipients in the fund or
19 the Pollution Prevention Assistance Account, as appropriate.

20 (4) Approve standards for area loan organization
21 application fees.

22 (5) Approve community development financial
23 institutions.

24 (b) Program.--In administering the program, the department
25 may do any of the following:

26 (1) Provide grants or other financial assistance to area
27 loan organizations for any of the following purposes:

28 (i) To establish loan reserve funds.

29 (ii) To reimburse loan losses to commercial banks

30 and other financial institutions as a means of

encouraging the expansion and financing of small businesses.

(2) Apply to the Ex-Im Bank for delegated authority lender status under the Ex-Im Bank's Working Capital Guaranty Program.

(3) Utilize the outstanding portfolio of loans made under this chapter to raise additional funds by selling, securing, hypothecating or otherwise using such loan proceeds as a financing vehicle if the funds raised are used by the department for either of the following purposes:

(i) To make new and additional loans under this chapter.

(ii) To pay costs associated with financing.

§ 2306. Capital development loans.

(a) Application.--A small business may submit an application and any applicable application fee to its area loan organization requesting a loan for certain costs of a capital development project. The application shall be on the form required by the department and shall include or demonstrate all of the following:

(1) The name and address of the applicant.

(2) A statement of the amount of loan assistance sought.

(3) A statement of the capital development project, including a detailed statement of the cost of the project.

(4) A financial commitment from a responsible source for any cost of the capital development project in excess of the amount requested.

(5) Any other information required by the department.

(b) Area loan organization review.--

(1) Upon receipt of a completed application, an area

1 loan organization shall investigate and determine all of the
2 following:

3 (i) If the applicant is a small business.

4 (ii) If the project is a capital development
5 project.

6 (iii) If, when the applicant is a small business,
7 the capital development project demonstrates a
8 substantial likelihood of creating or preserving
9 employment activities in this Commonwealth or if, when
10 the applicant is an agricultural producer, the project
11 demonstrates a substantial likelihood of enhancing and
12 growing normal agriculture operations.

13 (iv) The ability of the applicant to meet and
14 satisfy the debt service as it becomes due and payable.

15 (v) The existence and sufficiency of collateral for
16 the loan.

17 (vi) Relevant criminal and credit history and
18 ratings of the applicant as determined from outside
19 credit reporting services and other sources.

20 (vii) The number of employment opportunities to be
21 created or preserved by the proposed capital development
22 project.

23 (viii) If the applicant complied with all other
24 criteria established by the department.

25 (2) Upon being satisfied that all requirements have been
26 met, the area loan organizations shall recommend the
27 applicant to the department and forward the application with
28 all supporting documentation to the department for its review
29 and approval.

30 (c) Department review.--

1 (1) Within 30 days of receiving a recommendation and a
2 completed application, the department shall review the
3 application. If the department is satisfied that all
4 requirements have been met, the department may approve the
5 loan request in accordance with the following:

6 (i) A loan for land, buildings and machinery and
7 equipment may not exceed \$200,000 or 50% of the total
8 capital development project costs, whichever is less. For
9 the purposes of this subparagraph, capital development
10 project costs incurred during the 12-month period prior
11 to the date of submission of the application to the
12 department shall be considered part of the total capital
13 development project costs.

14 (ii) A loan for working capital may not exceed
15 \$100,000 or 50% of the total capital development project
16 costs, whichever is less.

17 (iii) Except for loans to agricultural producers, a
18 loan must create or preserve one job for every \$25,000
19 loaned.

20 (2) The department shall notify the area loan
21 organization and applicant of its decision.

22 (d) Approvals.--For applications which are approved, the
23 department shall draw an advance equal to the principal amount
24 of the loan from the fund. The advance shall be forwarded to the
25 area loan organization and, upon receipt by the area loan
26 organization, shall become an obligation of the area loan
27 organization. Prior to providing loan funds to the applicant,
28 the area loan organization shall require the applicant to
29 execute a note and to enter into a loan agreement. In addition
30 to the requirements of subsection (e), the loan agreement shall

1 include a provision requiring the recipient to use the loan
2 proceeds to pay the costs of the capital development project.
3 The department may require the area loan organization to impose
4 other terms and conditions on the recipient if the department
5 determines that they are in the best interests of this
6 Commonwealth, including a provision requiring collateral for any
7 penalty imposed under subsection (g).

8 (e) Loan terms.--A loan agreement entered into in accordance
9 with subsection (c) shall do all of the following:

10 (1) State the collateral securing the loan. All loans
11 shall be secured by lien positions on collateral at the
12 highest level of priority as may be determined by the area
13 loan organization with the approval of the department.

14 (2) State the repayment period in accordance with the
15 following:

16 (i) A loan for real property shall have a repayment
17 period of up to 15 years.

18 (ii) A loan for machinery and equipment shall have a
19 repayment period of up to ten years.

20 (iii) A loan for working capital shall have a
21 repayment period of up to three years.

22 (iv) If, in a capital development project, there are
23 two or more uses planned, the loan terms may be blended.

24 (3) State the interest rate in accordance with the
25 following:

26 (i) Except as provided in subparagraph (ii), loans
27 shall be made at an interest rate not to exceed 5% for
28 the term of the loan.

29 (ii) A loan to a small business which is an
30 agricultural producer shall be made at an interest rate

1 of not less than 2% for the term of the loan if all of
2 the following apply:

3 (A) A declaration under 35 Pa.C.S. § 7301(c)
4 (relating to general authority of Governor) is in
5 effect for at least ten days prior to the date of
6 application.

7 (B) The application is made within nine months
8 of termination of the declaration.

9 (C) The agricultural producer is in the area
10 which has been declared to be a natural disaster
11 area.

12 (f) Loan administration.--A loan made under this section
13 shall be administered in accordance with departmental policies
14 and procedures by the area loan organization which made the
15 loan. Each area loan organization shall submit an annual report
16 on the form required by the department and which includes or
17 demonstrates all of the following:

18 (1) Each outstanding loan.

19 (2) The date approved.

20 (3) The original principal amount.

21 (4) The current principal balance.

22 (5) The interest rate.

23 (6) The purpose for which the loan was made.

24 (7) An enumeration of any problems or issues which have
25 arisen with regard to each loan.

26 (8) A statement regarding the progress of the small
27 business in creating or preserving its requisite number of
28 employment opportunities.

29 (9) Any other information or documentation required by
30 the department.

1 (g) Penalty.--

2 (1) Except as provided in paragraph (2), the department
3 shall impose a penalty upon a recipient if the recipient
4 fails to create or preserve the number of employment
5 opportunities specified in its approved application.

6 (2) The department may waive the penalty required by
7 paragraph (1) if the department determines that the failure
8 was due to circumstances outside the control of the
9 recipient.

10 (3) The amount of the penalty imposed under paragraph
11 (1) shall be equal to an increase in the interest rate to 2%
12 greater than the current prime interest rate for the
13 remainder of the loan.

14 (h) Defaults.--The department may by foreclosure take title
15 to a capital development project which it financed if
16 acquisition is necessary to protect a loan made under this
17 section. The department shall pay all costs arising out of the
18 foreclosure and acquisition from moneys held in the fund. The
19 department may, in order to minimize financial losses and
20 sustain employment, lease the capital development project. The
21 department may withdraw moneys from the fund to purchase first
22 mortgages and to make payments on first mortgages on any capital
23 development project which it financed where purchase or payment
24 is necessary to protect a loan made under this section. The
25 department may sell, transfer, convey and assign the first
26 mortgages and shall deposit any moneys derived from the sale of
27 any first mortgages in the fund.

28 § 2307. EDA loans.

29 (a) Application and administration procedures.--The
30 department shall establish application and administration

1 procedures to be used for EDA loans. The procedures shall be
2 established by guidelines and shall conform in all respects to
3 those procedures required or established by the Economic
4 Development Administration for use of Federal funds under the
5 Public Works and Economic Development Act of 1965 (Public Law
6 89-136, 42 U.S.C. § 3121 et seq.).

7 (b) Eligibility for EDA loans.--The department shall
8 establish eligibility requirements to be used for EDA loans. The
9 requirements shall be established by guidelines and shall
10 conform in all respects to those procedures required or
11 established by the Economic Development Administration for use
12 of Federal funds under the Public Works and Economic Development
13 Act of 1965.

14 § 2308. Loans in distressed communities.

15 (a) Application.--A small business located in a distressed
16 community may submit an application and any applicable
17 application fee to a community development institution
18 requesting a loan for certain costs of a capital development
19 project. The application shall be on the form required by the
20 department and shall include or demonstrate all of the
21 following:

22 (1) The name and address of the applicant.

23 (2) A statement that the small business is engaged in
24 business-to-public service or in the mercantile, commercial
25 or point-of-sale retail business sectors.

26 (3) A statement of the amount of loan assistance sought.

27 (4) A statement of the capital development project,
28 including a detailed statement of the cost of the project.

29 (5) A financial commitment from a responsible source for
30 the cost of the capital development project in excess of the

1 amount requested.

2 (6) Any other information required by the department.

3 (b) Community development institution review.--

4 (1) Upon receipt of a completed application, a community
5 development institution shall investigate and determine all
6 of the following:

7 (i) If the applicant is a small business which is
8 engaged in business-to-public service or in the
9 mercantile, commercial or point-of-sale retail business
10 sectors in accordance with conditions or criteria
11 established by the department.

12 (ii) If the project is a capital development
13 project.

14 (iii) If the applicant has demonstrated a direct
15 impact on the community in which the capital development
16 project is or will be located, on residents of that
17 community or on the local and/or regional economy. The
18 department shall establish criteria that will assist in
19 making this demonstration.

20 (iv) Number of employment opportunities to be
21 created or preserved by the proposed capital development
22 project.

23 (v) If the applicant complied with all other
24 criteria established by the department.

25 (2) Upon being satisfied that all requirements have been
26 met, the community development institution shall recommend
27 the applicant to the department and forward the application
28 with all supporting documentation to the department for its
29 review and approval.

30 (c) Department review.--

1 (1) Upon receipt of a recommendation and a completed
2 application, the department shall investigate and determine
3 all of the following:

4 (i) The ability of the applicant to meet and satisfy
5 the debt service as it becomes due and payable. In
6 reviewing repayment obligations, loans shall not be
7 approved on the basis of direct financial return on
8 investment and shall not be held to the loan loss
9 standards of private commercial lenders. Loans shall be
10 reviewed for the purpose of establishing a strong
11 economic base and promoting entrepreneurial activity
12 within the distressed community.

13 (ii) The existence and sufficiency of collateral for
14 the loan.

15 (iii) Relevant criminal and credit history and
16 ratings of the applicant as determined from outside
17 credit reporting services and other sources.

18 (2) If the department is satisfied that all requirements
19 have been met, the department may approve the loan request in
20 an amount not to exceed \$200,000 or 50% of the total capital
21 development project costs, whichever is less. For the purpose
22 of this paragraph, capital development project costs, except
23 the costs related to working capital, incurred during the 12-
24 month period prior to the date of submission of the
25 application to the department shall be considered part of the
26 total capital development project costs.

27 (3) The department shall notify the community
28 development institution and applicant of its decision.

29 (d) Approvals.--For applications which are approved, the
30 department shall draw an advance equal to the principal amount

1 of the loan from the fund and, prior to providing loan funds to
2 the applicant, the department shall require the applicant to
3 execute a note and to enter into a loan agreement. In addition
4 to the requirements of subsection (e), the loan agreement shall
5 include a provision requiring the recipient to use the loan
6 proceeds to pay the costs of the capital development project.
7 The department may impose other terms and conditions on the
8 recipient if the department determines they are in the best
9 interests of this Commonwealth, including a provision requiring
10 collateral for any penalty imposed under subsection (g).

11 (e) Loan terms.--A loan agreement entered into in accordance
12 with subsection (d) shall do all of the following:

13 (1) State any collateral securing the loan. The
14 department may use its best judgment to identify and secure
15 collateral.

16 (2) State the repayment period which may be flexible.

17 (3) State the interest rate which may not be less than
18 2% nor more than 5% for the term of the loan.

19 (4) State that the recipient agrees to maintain, at a
20 minimum, the number of jobs in existence as of the date of
21 loan application.

22 (f) Loan administration.--A loan made under this section
23 shall be administered in accordance with departmental policies
24 and procedures.

25 (g) Penalty.--

26 (1) Except as provided in paragraph (2), the department
27 shall impose a penalty upon a recipient if the recipient
28 fails to preserve the number of employment opportunities
29 specified in its approved application.

30 (2) The department may waive the penalty required by

paragraph (1) if the department determines that the failure was due to circumstances outside the control of the recipient.

(3) The amount of any penalty imposed under paragraph (1) shall be equal to an increase in the interest rate to 2% greater than the current prime interest rate for the remainder of the loan.

(h) Defaults.--The department may take title by foreclosure to a capital development project which it financed where acquisition is necessary to protect a loan made under this section. The department shall pay all costs arising out of the foreclosure and acquisition from money held in the fund. The department may, in order to minimize financial losses and sustain employment, lease the capital development project. The department may withdraw money from the fund to purchase first mortgages and to make payments on first mortgages on any capital development project which it financed if purchase or payment is necessary to protect a loan made under this section. The department may sell, transfer, convey and assign the first mortgages and shall deposit in the fund money derived from the sale of any first mortgages.

§ 2309. Pollution prevention assistance loans.

(a) Application.--A small business may submit an application and any application fee to a pollution prevention assistance agency requesting a loan for a pollution prevention infrastructure. The application shall be on the form required by the department and shall include or demonstrate all of the following:

(1) The name and address of the applicant.

(2) A statement of the amount of loan assistance sought.

1 (3) A statement of the pollution prevention
2 infrastructure, including a detailed statement of the cost of
3 the infrastructure.

4 (4) A financial commitment from a responsible source for
5 the cost of the pollution prevention infrastructure in excess
6 of the amount requested.

7 (5) Any other information required by the department.

8 (b) Pollution prevention assistance agency review.--

9 (1) Upon receipt of a completed application, a pollution
10 prevention assistance agency shall investigate and determine
11 all of the following:

12 (i) If the applicant is a small business.

13 (ii) If the project is for pollution prevention
14 infrastructure.

15 (iii) If the applicant complied with all other
16 criteria established by the department.

17 (2) Upon being satisfied that all requirements have been
18 met, the pollution prevention assistance agency shall
19 recommend the applicant to the department and forward the
20 application with all supporting documentation to the
21 department for its review and approval.

22 (c) Department review.--

23 (1) Upon receipt of a recommendation and a completed
24 application, the department shall investigate and determine
25 all of the following:

26 (i) If the pollution prevention infrastructure
27 demonstrates a substantial likelihood of preventing or
28 reducing pollution. The Department of Environmental
29 Protection shall assist the department in reviewing the
30 applications and provide technical assistance.

1 (ii) The ability of the applicant to meet and
2 satisfy the debt service as it becomes due and payable.
3 In reviewing repayment obligations, loans shall not be
4 approved on the basis of direct financial return on
5 investment and shall not be held to the loan loss
6 standards of private commercial lenders. Loans shall be
7 reviewed for the purpose of reducing pollution through
8 source reduction technologies or processes.

9 (iii) The existence and sufficiency of collateral
10 for the loan.

11 (iv) Relevant criminal and credit history and
12 ratings of the applicant as determined from outside
13 credit reporting services and other sources.

14 (2) If the department is satisfied that all requirements
15 have been met, the department may approve the loan request. A
16 loan approved under this subsection may not exceed the lesser
17 of:

18 (i) \$100,000; or

19 (ii) 75% of infrastructure costs.

20 (3) The department shall notify the pollution prevention
21 assistance agency and applicant of its decision.

22 (d) Approvals.--For applications which are approved, the
23 department shall draw an advance equal to the principal amount
24 of the loan from the Pollution Prevention Assistance Account.
25 Prior to providing loan funds to the applicant, the department
26 shall require the applicant to execute a note and to enter into
27 a loan agreement. In addition to the requirements of subsection
28 (e), the loan agreement shall include a provision requiring the
29 recipient to use the loan proceeds to pay the costs of the
30 pollution prevention infrastructure. The department may impose

1 other terms and conditions on the recipient if the department
2 determines they are in the best interests of this Commonwealth,
3 including a provision requiring collateral for any penalty
4 imposed under subsection (g).

5 (e) Loan terms.--A loan agreement entered into in accordance
6 with subsection (d) shall do all of the following:

7 (1) State the collateral securing the loan. All loans
8 shall be secured by lien positions on collateral at the
9 highest level of priority as may be determined by the
10 department.

11 (2) State the repayment period which may not exceed 10
12 years.

13 (3) State that the interest rate is 2%.

14 (4) State that any loan fee is not to exceed 5% of the
15 loan amount.

16 (f) Loan administration.--A loan made under this section
17 shall be administered in accordance with departmental policies
18 and procedures.

19 (g) Penalty.--

20 (1) Except as provided in paragraph (2), the department
21 shall impose a penalty upon a recipient if the recipient
22 fails to carry out the pollution prevention infrastructure
23 project as specified in its approved application.

24 (2) The department may waive the penalty required by
25 paragraph (1) if the department determines that the failure
26 was due to circumstances outside the control of the
27 recipient.

28 (3) The amount of any penalty imposed under paragraph
29 (1) shall be equal to an increase in the interest rate to 2%
30 greater than the current prime interest rate for the

1 remainder of the loan.

2 (h) Defaults.--The department may take title by foreclosure
3 to a pollution prevention infrastructure which it financed if
4 acquisition is necessary to protect a loan made under this
5 section. The department shall pay all costs arising out of the
6 foreclosure and acquisition from money held in the Pollution
7 Prevention Assistance Account. The department may, in order to
8 minimize financial losses and sustain employment, lease the
9 pollution prevention infrastructure. The department may withdraw
10 money from the Pollution Prevention Assistance Account to
11 purchase first mortgages and to make payments on first mortgages
12 on any pollution prevention infrastructure which it financed if
13 the purchase or payment is necessary to protect a loan made
14 under this section. The department may sell, transfer, convey
15 and assign the first mortgages and shall deposit any money
16 derived from the sale of any first mortgages in the Pollution
17 Prevention Assistance Account.

18 § 2310. Export financing loans.

19 (a) Application.--A person may submit an application and any
20 applicable application fee to the department or its area loan
21 organization requesting a loan for certain costs of a capital
22 development project which will be used in export activities. The
23 application must be on the form required by the department and
24 must include or demonstrate all of the following:

25 (1) The name and address of the applicant.

26 (2) A statement of the amount of loan assistance sought.

27 (3) A statement of the capital development project,
28 including a detailed statement of the cost of the project.

29 (4) A financial commitment from a responsible source for
30 any cost of the capital development project in excess of the

1 amount requested.

2 (5) A statement that the loan, if approved, would not
3 supplant funding from private sector sources on commercially
4 reasonable terms.

5 (6) Any other information required by the department.

6 (b) Review.--Upon receipt of a completed application, the
7 department shall investigate and determine all of the following:

8 (1) If the applicant is an export business.

9 (2) If the project is a capital development project.

10 (3) The ability of the applicant to meet and satisfy the
11 debt service as it becomes due and payable.

12 (4) The existence and sufficiency of collateral for the
13 loan.

14 (5) Relevant criminal and credit history and ratings of
15 the applicant as determined from outside credit reporting
16 services and other sources.

17 (6) Number of employment opportunities to be created or
18 preserved by the proposed capital development project.

19 (7) If the applicant complied with all other criteria
20 established by the department.

21 (c) Approvals.--If the department is satisfied that all
22 requirements have been met, the department may approve the loan
23 request. A loan approved under this section may not exceed
24 \$350,000. The department shall notify the applicant and, if
25 applicable, the area loan organization of its decision. The
26 department shall reserve an amount equal to the principal amount
27 of the loan within the fund or the special account authorized by
28 section 2304(c)(2) (relating to fund and accounts). Prior to
29 providing funds to the applicant, the department shall require
30 the applicant to execute a note and enter into a loan agreement.

1 In addition to the requirements of subsection (d), the loan
2 agreement shall include a provision requiring the recipient to
3 use the loan proceeds to pay the costs of the capital
4 development project. The department may impose other terms and
5 conditions on the recipient if the department determines they
6 are in the best interests of this Commonwealth, including any of
7 the following:

8 (1) A provision requiring collateral for any penalty
9 imposed under subsection (f).

10 (2) A provision requiring the person to be eligible for
11 an insurance policy.

12 (3) A provision requiring the loan to be guaranteed by
13 the Working Capital Guaranty Program offered by the Ex-Im
14 Bank.

15 (4) A provision requiring an export credit sales
16 contract insured by an insurance policy.

17 (d) Loan terms.--A loan agreement entered into in accordance
18 with subsection (c) shall do all of the following:

19 (1) State the collateral securing the loan. All loans
20 shall be secured by lien positions on collateral at the
21 highest level of priority as may be determined by the
22 department.

23 (2) State the repayment period as determined by the
24 department.

25 (3) State the interest rate as determined by the
26 department.

27 (e) Loan administration.--A loan made under this section
28 shall be administered in accordance with departmental policies
29 and procedures.

30 (f) Penalty.--

1 (1) Except as provided in paragraph (2), the department
2 shall impose a penalty upon a recipient if the recipient
3 fails to carry out the export activities specified in its
4 approved application.

5 (2) The department may waive the penalty required by
6 paragraph (1) if the department determines that the failure
7 was due to circumstances outside the control of the
8 recipient.

9 (3) The amount of the penalty imposed under paragraph
10 (1) shall be equal to an increase in the interest rate to 2%
11 greater than the current prime interest rate for the
12 remainder of the loan.

13 (g) Defaults.--The department may, by foreclosure, take
14 title to a capital development project which it financed if
15 acquisition is necessary to protect a loan made under this
16 section. The department shall pay all costs arising out of the
17 foreclosure and acquisition from money held in the fund or a
18 special account authorized by section 2304(c)(2). The department
19 may, in order to minimize financial losses and sustain
20 employment, lease the capital development project. The
21 department may withdraw money from the fund or a special account
22 authorized by section 2304(c)(2) to purchase first mortgages and
23 to make payments on first mortgages on any capital development
24 project which it financed if purchase or payment is necessary to
25 protect a loan made under this section. The department may sell,
26 transfer, convey and assign the first mortgages and shall
27 deposit any money derived from the sale of any first mortgages
28 in the fund or a special account authorized by section 2304(c)
29 (2).

30 § 2311. Reporting and inspection.

1 (a) Inspection.--An applicant or a recipient shall, upon
2 request, permit authorized employees of the department or its
3 agent to inspect the plant, books and records of the applicant
4 or recipient.

5 (b) Updating.--An applicant or a recipient shall provide
6 updated information to the department and its agents if
7 conditions change or to the extent that the information
8 originally given becomes inaccurate or misleading.

9 (c) Periodic reports.--A recipient shall provide the
10 department and its agents with such periodic financial reports
11 as the department may require until the loan is repaid in full.

12 (d) Financial and performance audits.--An agent of the
13 department shall annually submit to the department, at the
14 agent's expense, an independent financial audit. If the audit
15 reveals misconduct of a material nature on the part of the
16 agent, the department shall take appropriate action.

17 § 2312. Limitations.

18 No loans shall be recommended or approved if the proceeds of
19 the loan could do any of the following:

20 (1) Cause, aid or assist directly in the relocation of
21 any business operations from one part of this Commonwealth to
22 another unless there is at least a 25% net increase in
23 employment.

24 (2) Refinance any portion of the total cost of a capital
25 development project, pollution prevention infrastructure or
26 other existing loans or debt.

27 (3) Finance a capital development project or pollution
28 prevention infrastructure located outside the geographic
29 boundaries of this Commonwealth.

30 (4) Provide funds, directly or indirectly, for payment

1 distribution or as loan owners, partners or shareholders of a
2 small business, except as ordinary compensation for services
3 rendered.

4 (5) Provide funds for speculation in real or personal
5 property, whether tangible or intangible.

6 CHAPTER 29

7 MACHINERY AND EQUIPMENT LOANS

8
9 Sec.

10 2901. Scope.

11 2902. Definitions.

12 2903. Establishment.

13 2904. Machinery and Equipment Loan Fund.

14 2905. Eligibility for loans; terms and conditions.

15 2906. Application and administration.

16 2907. Powers of secretary.

17 2908. Reporting and inspection.

18 2909. Nondiscrimination.

19 2910. Conflict of interest.

20 2911. Reports to General Assembly.

21 2912. Guidelines.

22 § 2901. Scope.

23 This chapter relates to the Machinery and Equipment Loan
24 Program.

25 § 2902. Definitions.

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

29 "Business enterprise." A for-profit corporation, partnership
30 or proprietorship. The term includes a medical facility.

1 "Farm commodity." Any Pennsylvania-grown agricultural,
2 horticultural, aquacultural, vegetable, fruit and floricultural
3 product of the soil, livestock and meats, wools, hides, furs,
4 poultry, eggs, dairy products, nuts, mushrooms, honey products
5 and forest products.

6 "Fund." The Machinery and Equipment Loan Fund created and
7 established by this chapter.

8 "Medical facility." An entity licensed as a hospital under
9 the act of June 13, 1967 (P.L.31, No.21), known as the Public
10 Welfare Code, or the act of July 19, 1979 (P.L.130, No.48),
11 known as the Health Care Facilities Act.

12 "Normal agricultural operation." The term shall have the
13 same meaning as given to it in section 2 of the act of June 10,
14 1982 (P.L.454, No.133), entitled "An act protecting agricultural
15 operations from nuisance suits and ordinances under certain
16 circumstances."

17 "Production agriculture." The management and use of a normal
18 agricultural operation for the production of a farm commodity.

19 § 2903. Establishment.

20 There is established within the department a program to be
21 known as the Machinery and Equipment Loan Program. The program
22 shall be administered by the department and provide loans to
23 business enterprises for machinery and equipment.

24 § 2904. Machinery and Equipment Loan Fund.

25 (a) Creation.--There is created a special account in the
26 Treasury Department, to be known as the Machinery and Equipment
27 Loan Fund, to which shall be credited all program appropriations
28 made by the General Assembly, all proceeds from loan repayments
29 and any and all other deposits, payments or contributions from
30 any other source made available to the fund. The fund shall

1 operate as a revolving fund whereby all appropriations, payments
2 and interest made thereto may be applied and reapplied to the
3 purposes of this chapter.

4 (b) Credits to fund.--All appropriations, deposits and
5 contributions made to the fund shall be immediately credited in
6 full to the fund, and earnings on the moneys held in the fund
7 shall also be credited to the fund for the purposes of this
8 chapter.

9 § 2905. Eligibility for loans; terms and conditions.

10 (a) Loans; general rules.--The secretary may make advances
11 from the fund, subject to the terms, conditions and restrictions
12 provided under this chapter, for the purpose of making loans to
13 business enterprises involved in industrial processes, mining,
14 manufacturing, production agriculture, information technology,
15 biotechnology, service as a medical facility or other industrial
16 or technology sectors, as defined by the department, to acquire
17 and install new machinery and equipment or upgrade existing
18 machinery and equipment, including the acquisition, application
19 and utilization of computer hardware and software.

20 (1) All loans shall be subject to all of the following
21 conditions:

22 (i) Be made to eligible business enterprises under
23 the provisions of this chapter.

24 (ii) Have a maximum loan ceiling of \$5,000,000 or
25 50% of the cost of the project, whichever is less.

26 (iii) Be limited to the purchase and installation of
27 new equipment and machinery or the upgrade of existing
28 machinery and equipment. This subparagraph includes the
29 acquisition, application and utilization of computer
30 hardware and software.

1 (iv) Be limited to projects that demonstrate the
2 creation or retention of one job for every \$25,000
3 received from the fund. This subparagraph does not apply
4 to loans made to business enterprises involved in
5 production agriculture or to loans made to medical
6 facilities.

7 (v) Have an interest rate which shall be established
8 by the secretary.

9 (vi) Have a term of not in excess of ten years.

10 (2) For loans to medical facilities, loan funds may be
11 used only to finance the acquisition, installation and
12 utilization of machinery and equipment, including computer
13 hardware and software components, to be used in the
14 prescribing and dispensing of medication for medical facility
15 patients.

16 (b) Restrictions.--No loans shall be made that do any of the
17 following:

18 (1) Cause, aid or assist in, directly or indirectly, the
19 relocation of any business enterprise from one part of this
20 Commonwealth to another unless there is at least a 25%
21 increase in net employment.

22 (2) Supplant funding that is otherwise available
23 expeditiously from private sector sources on commercially
24 reasonable terms.

25 (3) Be for the purpose of refinancing any portion of the
26 total project cost or other existing loans or debt.

27 (4) Be for the purpose of financing projects located
28 outside the geographic boundaries of this Commonwealth.

29 (5) Be for the purpose of paying off a creditor that is
30 inadequately secured and is in a position to sustain a loss.

1 (6) Be for the purpose of repaying a debt owed to a
2 small business investment company.

3 (7) Provide funds for speculation in any kind of
4 property, real or personal, tangible or intangible.

5 (c) Security.--All loans shall be secured by no less than a
6 second lien position on the equipment purchased and other
7 sufficient collateral as determined by the secretary.

8 § 2906. Application and administration.

9 (a) Procedures.--Application and administration procedures
10 for fund loans shall be established by the secretary.

11 (b) Receipt.--The secretary shall receive applications from
12 eligible business enterprises for machinery and equipment loans.
13 Applications shall be made to the secretary in the form and
14 manner as the department may require.

15 (c) Investigation.--Upon receipt of the application, the
16 secretary shall investigate and review the application and
17 either approve or disapprove the loan application by proper
18 action of the department. The decision of the secretary shall be
19 based, in whole or in part, upon the following criteria:

20 (1) Ability of the applicant to meet and satisfy all
21 debt service as it becomes due and payable.

22 (2) Sufficiency of available collateral, including
23 satisfactory lien positions on real and personal property.

24 (3) Eligibility of the applicant as a business
25 enterprise involved in industrial processes, manufacturing,
26 mining, production agriculture, information technology,
27 biotechnology, services as a medical facility or other
28 industrial or technology sectors as defined by the secretary.

29 (4) Sufficient evidence that funds shall be used only to
30 acquire and install new equipment and machinery or upgrade

1 existing equipment and machinery, including the acquisition,
2 application and utilization of computer hardware and
3 software.

4 (5) Capital needs of the applicant.

5 (6) Conformity of the project to the provisions of this
6 chapter.

7 (7) Relevant criminal and credit history and ratings of
8 applicant as determined from outside credit reporting
9 services and other sources.

10 (8) Number of net employment opportunities created and
11 retained by the proposed project. This paragraph does not
12 apply to business enterprises involved in production
13 agriculture or medical facilities.

14 (9) Supporting evidence that the loan project will
15 increase the firm's competitiveness and value added within
16 its respective industry.

17 (10) Explanation of how the loan will aid the
18 Commonwealth in its efforts to assist business enterprises to
19 increase their productivity and improve the future
20 competitive position of this Commonwealth's industries.

21 (11) Compliance with the loan amount limitations
22 provided for machinery and equipment loans.

23 (12) Payment to date of all tax obligations due and
24 owing to the Commonwealth or any political subdivision
25 thereof.

26 (13) Conformity of all aspects of the loan transaction
27 with the substantive and procedural provisions of this
28 chapter and regulations promulgated hereunder.

29 (14) Such information and documentation as the secretary
30 shall require.

1 (d) Notification.--The secretary shall notify the applicant
2 of final approval or disapproval of the loan application within
3 a reasonable period of time following the receipt of the
4 application. In the case of approval of a loan application, the
5 secretary shall arrange to draw the loan amount from the fund
6 and advance the sum to the recipient. The advance shall be made
7 available in the form of a loan transaction, which loan shall be
8 evidenced by a note executed by the recipient and secured in a
9 manner as the secretary shall require in conformity in all
10 respects to the loan as approved by the secretary.

11 (e) Policy requirements and report.--All loans shall be
12 administered and monitored by the department in accordance with
13 the policies and procedures prescribed by the secretary. On or
14 before September 1 of each year, the secretary shall prepare a
15 report that includes the following:

- 16 (1) Each outstanding loan.
- 17 (2) The date of approval.
- 18 (3) The original principal balance.
- 19 (4) The current principal balance.
- 20 (5) The interest rate.
- 21 (6) The purpose for which the loan was made.
- 22 (7) An enumeration of any problems or issues which have
23 arisen with regard to each loan.
- 24 (8) A statement regarding the progress of the business
25 enterprise in creating and retaining its requisite number of
26 employment opportunities.
- 27 (9) Such other information and documentation as the
28 secretary shall require.

29 (f) Penalty for noncompliance.--In the event that a loan
30 recipient shall not comply with its approved application by

1 failing to create or preserve the number of employment
2 opportunities specified in its approved application, the
3 secretary shall impose a penalty equal to an increase in the
4 interest rate to 2% greater than the current prime interest rate
5 for the remainder of the loan unless the penalty is waived by
6 the secretary because the failure is due to circumstances
7 outside the control of the loan recipient. The penalty shall be
8 payable in installments that the secretary deems appropriate.

9 § 2907. Powers of secretary.

10 The secretary shall have and may exercise all powers and
11 authority necessary to the proper administration and
12 implementation of this chapter and shall have the authority to
13 adopt policies, procedures and guidelines and promulgate rules
14 and regulations necessary to effectuate the provisions of this
15 chapter.

16 § 2908. Reporting and inspection.

17 (a) Inspection.--Each business enterprise which applies for
18 or receives assistance under this chapter, upon reasonable
19 request of the department, shall permit duly authorized
20 employees of the department to inspect the plant, books and
21 records of the business enterprise.

22 (b) Updating.--Each business enterprise shall update the
23 information given to the department in its application if
24 conditions change or to the extent that the information given
25 originally becomes inaccurate or misleading.

26 (c) Periodic reports.--Each recipient of assistance under
27 this chapter shall provide the department with periodic
28 financial reports as the secretary may require until such time
29 as the loan is paid off.

30 § 2909. Nondiscrimination.

1 No loan shall be made to a business enterprise unless the
2 business enterprise certifies to the department, in a form
3 satisfactory to the department, that it shall not discriminate
4 against any employee or any applicant for employment because of
5 race, religion, color, national origin, sex or age. The business
6 enterprise shall also certify to the department that it is not
7 currently under citation for pollution violations and that in
8 the future it will meet all applicable antipollution standards.

9 § 2910. Conflict of interest.

10 No employee of the department shall, either directly or
11 indirectly, be a party to or have any financial interest in any
12 contract or agreement arising pursuant to this chapter.

13 § 2911. Reports to General Assembly.

14 (a) Annual reports.--On or before September 1 of each year,
15 the secretary shall provide a report to the Secretary of the
16 Senate and to the Chief Clerk of the House of Representatives.
17 The report shall describe all relevant activities of the
18 department pursuant to this chapter and shall include the
19 following:

20 (1) List of business enterprises receiving loans from
21 the fund and the amounts and terms of this assistance.

22 (2) Loan amounts repaid. Information under this
23 paragraph may be reported in the aggregate.

24 (3) Loans outstanding, balances due and any penalties
25 imposed. Information under this paragraph may be reported in
26 the aggregate.

27 (4) Jobs created by businesses receiving funds in
28 previous years. Information under this paragraph may be
29 reported in the aggregate.

30 (5) Other relevant information as determined by the

1 secretary.

2 (b) Availability of departmental reports.--Reports prepared
3 by the secretary under section 2906(e) (relating to application
4 and administration) shall be made available upon request to
5 members of the General Assembly.

6 § 2912. Guidelines.

7 The department shall develop written guidelines for the
8 implementation of this chapter.]

9 Section 2. Title 64 is amended by adding a section to read:

10 § 1545. Transfer of funds.

11 The authority may transfer funds to the Liberty Financing
12 Authority established under Chapter 17 (relating to Liberty
13 Financing Authority) with the approval of a super-majority of
14 the board. The Liberty Financing Authority may approve a
15 transfer from the authority by acting under section 1712(e)
16 (relating to board).

17 Section 3. Title 64 is amended by adding a chapter to read:

18 CHAPTER 17

19 LIBERTY FINANCING AUTHORITY

20 Subchapter

21 A. General Provisions

22 B. Structure and Powers

23 C. Bonds

24 D. Accounts

25 E. Programs

26 F. Miscellaneous Provisions

27 SUBCHAPTER A

28 GENERAL PROVISIONS

29 Sec.

30 1701. Scope of chapter.

1 1702. Construction.

2 1703. Findings and declaration of policy.

3 1704. Definitions.

4 § 1701. Scope of chapter.

5 This chapter relates to the Liberty Financing Authority.

6 § 1702. Construction.

7 (a) General rule.--This chapter shall be liberally construed
8 in order to effect the legislative and public purposes as set
9 forth in this subchapter.

10 (b) Rights of obligees.--The provisions of this chapter
11 providing for security, rights and remedies of obligees of the
12 authority shall be liberally construed to achieve the
13 legislative and public purposes as set forth in this subchapter.

14 (c) Limitation.--If a provision of this chapter is judged to
15 be invalid by a court of competent jurisdiction, the order or
16 judgment shall be confined in its operation to the controversy
17 in which it was rendered and shall not affect or invalidate a
18 remaining provision of this chapter.

19 § 1703. Findings and declaration of policy.

20 The General Assembly finds and declares as follows:

21 (1) Many existing businesses in this Commonwealth could
22 expand or otherwise become more competitive if provided with
23 additional sources of financing for modernization, expansion
24 and other capital needs. This, in turn, could increase
25 employment levels, which would help to develop a stable and
26 healthy economy and revitalize communities, thereby improving
27 the health, safety and general welfare of the citizens of
28 this Commonwealth.

29 (2) A minimum level of unemployment and a maximum level
30 of business opportunity can best be attained through the

1 promotion, stimulation and revitalization of industrial,
2 commercial, technological, agricultural and tourism
3 activities in this Commonwealth. Through such efforts, the
4 Commonwealth's competitiveness in the global economy may also
5 be enhanced.

6 (3) The Commonwealth has developed a great number of
7 programs with the objective of furthering these economic
8 purposes. There have also been a correspondingly great number
9 of boards and authorities to administer the various programs.
10 While many of these economic development programs have been
11 successful, others have fallen short.

12 (4) The economic health of our communities will improve
13 by eliminating programs that have not worked for this
14 Commonwealth, keeping those that perform and consolidating
15 the management of the remaining programs will increase
16 efficiency and transparency.

17 (5) The Liberty Financing Authority shall fund and
18 administer the economic development programs encompassed in
19 this chapter. It shall do so with the prudence, proficiency
20 and transparency that the citizens of this Commonwealth
21 expect, and will have as resources the expertise and
22 administrative assistance of the Department of Community and
23 Economic Development, as well as the other State agencies.
24 Resources will be more accessible to businesses in this
25 Commonwealth, citizens will be able to see where their tax
26 dollars are being invested and the overall health of this
27 Commonwealth's economy will improve, beginning in individual
28 communities and spreading throughout this Commonwealth.

29 § 1704. Definitions.

30 The following words and phrases when used in this chapter

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Agricultural processor." An entity that adds value by
4 subjecting one or more farm commodities to a process of
5 manufacture, development or preparation for sale or a person
6 that converts a farm product into a marketable form.

7 "Agricultural producer." A person or entity involved in the
8 management and use of an agricultural operation for the
9 production of a farm commodity.

10 "Agriculture." Any of the following:

11 (1) the management and use of an agricultural operation
12 for the production of a farm commodity;

13 (2) the sale of farm commodities at wholesale;

14 (3) the sale of farm commodities at retail by
15 supermarkets or farmers' markets; or

16 (4) energy-related activities impacting production
17 agriculture.

18 "Authority." The Liberty Financing Authority established in
19 section 1711 (relating to authority).

20 "Board." The board of the Liberty Financing Authority
21 established in section 1712 (relating to board).

22 "Bonds." Except where otherwise provided, bonds, notes,
23 instruments, refunding notes and bonds and other evidences of
24 indebtedness or obligations which the Liberty Financing
25 Authority is authorized to issue or assume under this chapter.

26 "Business." A corporation, partnership, sole proprietorship,
27 limited liability company, business trust or other commercial
28 entity. The term shall include not-for-profit entities.

29 "Capital development project." The acquisition, development,
30 construction, renovation or use of land, buildings, equipment

1 and machinery and working capital by a business as part of:

2 (1) A for-profit venture not of a mercantile or service-
3 related nature, except for hospitality industry projects.

4 (2) An effort to:

5 (i) comply with Federal or State environmental laws
6 or regulations;

7 (ii) complete an approved remediation project; or

8 (iii) adopt generally acceptable pollution
9 prevention practices.

10 (3) An effort to recycle municipal or commercial waste,
11 or to use recycled municipal or commercial waste materials in
12 manufacturing.

13 (4) A for-profit project or venture to manufacture
14 products to be exported out of the United States, which will
15 increase this Commonwealth's market share.

16 "Commercial lending activities." The making of loans and the
17 provision of deposit services to business entities, except that
18 a farm credit system institution under the Farm Credit Act of
19 1971 (Public Law 92-181, 85 Stat. 583) need not offer deposit
20 services to qualify as a provider of commercial lending
21 activities under this chapter.

22 "Commercial lending institutions." A federally chartered or
23 State-chartered bank, savings bank, savings and loan association
24 or farm credit system institution under the Farm Credit Act of
25 1971 (Public Law 92-181, 85 Stat. 583) which has a satisfactory
26 rating from its primary regulator and which is engaged in
27 commercial lending activities. The institution must operate at
28 least one full-service branch for deposit gathering and lending
29 located within this Commonwealth or be a farm credit system
30 institution under the Farm Credit Act of 1971.

1 "Commonwealth agency." An agency, authority or other
2 instrumentality of the Commonwealth.

3 "Community development financial institution." A community
4 development financial institution certified in accordance with
5 the Community Development Banking and Financial Institutions Act
6 of 1994 (Public Law 103-325, 108 Stat. 2163).

7 "Comprehensive county plan" or "comprehensive municipal
8 plan." The comprehensive plan adopted under applicable law by a
9 county, municipality, city of the first class or city of the
10 second class.

11 "Consumer energy conservation project." The purchase or
12 installation of any of the following:

13 (1) energy-efficient windows and doors;

14 (2) geothermal heat pumps;

15 (3) insulation, air-sealing and other energy-saving
16 projects approved by the Department of Environmental
17 Protection;

18 (4) energy-efficient or alternative energy heating and
19 cooling equipment or systems;

20 (5) energy-efficient solid fuel residential furnaces, as
21 approved by the Department of Environmental Protection, to
22 include furnaces that burn coal or wood pellets; or

23 (6) energy-efficient lighting systems.

24 "Cost of the project" or "cost." Any of the following:

25 (1) Costs and expenses of acquisition of interests in
26 land, infrastructure, buildings, structures, equipment,
27 furnishings, fixtures and other tangible or intangible
28 property.

29 (2) Costs and expenses of construction, reconstruction,
30 erection, equipping, expansion, extension, improvement,

installation, rehabilitation, renovation or repair of the
buildings, structures and equipment.

(3) Costs and expenses of demolishing, removing or
relocating buildings or structures on lands acquired or to be
acquired and the expense of acquiring land to which buildings
or structures may be moved or relocated.

(4) Costs and expenses of preparing land for
development.

(5) Costs and expenses incidental to determining the
feasibility or practicality of the project, including
engineering, legal and accounting and financial services, as
well as any necessary studies or surveys. No more than 10% of
grant or loan funds may be used under this paragraph.

(6) Working capital or other capital needs related to
the project.

"Data center." A facility used to house computer systems and
associated components, such as telecommunications and storage
systems.

"Data center consolidation project." A project, as
determined by the Liberty Financing Authority, that utilizes
server virtualization technology to consolidate and reduce the
required number of servers at a data center for the purpose of
increased energy efficiency and reduced energy demand.

"Department." Except where otherwise provided, the
Department of Community and Economic Development of the
Commonwealth.

"Distressed community." Any of the following:

(1) A geographic area in which:

(i) the median income is below 80% of the median
income for the United States or this Commonwealth;

1 (ii) 20% or more of the population is below the
2 poverty level by family size published by the United
3 States Bureau of the Census; or

4 (iii) the unemployment rate is 50% higher than the
5 national average.

6 (2) An area which is designated a subzone, expansion
7 subzone or improvement subzone under the act of October 6,
8 1998 (P.L.705, No.92), known as the Keystone Opportunity
9 Zone, Keystone Opportunity Expansion Zone and Keystone
10 Opportunity Improvement Zone Act.

11 (3) Any other area designated as distressed according to
12 standards adopted by the Liberty Financing Authority.

13 "Ex-Im Bank." The Export-Import Bank of the United States.

14 "Exports." Goods or services to be sold or performed outside
15 the United States.

16 "Export business." Any for-profit corporation, limited
17 liability company, partnership, proprietorship or other business
18 entity involving export activities and employing 250 or fewer
19 individuals.

20 "Farm commodity." Any agricultural, horticultural,
21 aquacultural, vegetable, fruit and floricultural product of the
22 soil, livestock and meats, wools, hides, furs, poultry, eggs,
23 dairy products, nuts, mushrooms, honey products and forest
24 products.

25 "Federal agency." The United States of America, the
26 President of the United States, the Congress of the United
27 States and any department, corporation, agency or
28 instrumentality designated or established by the United States
29 of America.

30 "Governing body." The body or board authorized by law to

enact ordinances or adopt resolutions for a political subdivision.

"Hazardous substance." Any element, compound or material which is:

(1) Regulated as a hazardous air pollutant under section 6.6 of the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act.

(2) A hazardous waste, as defined under section 103 of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

(3) Regulated under the act of December 7, 1990 (P.L.639, No.165), known as the Hazardous Material Emergency Planning and Response Act.

"Hospitality industry project." A for-profit project or venture which involves a business that operates a hotel, motel or other lodging facility, or a restaurant or other food service operation that is open to the public.

"Industrial development agency." A nonprofit organization which has as its purpose the promotion, encouragement, construction, development and expansion of new or existing industrial development projects.

"Industrial development project." A project sponsored by an industrial development agency involving the acquisition or improvement of real property within this Commonwealth to be occupied and operated by any of the following:

(1) An industrial enterprise.

(2) A manufacturing enterprise.

(3) A research and development enterprise.

(4) An agricultural producer.

(5) An agricultural processor.

1 "Industrial enterprise." An enterprise other than a
2 mercantile, commercial or retail enterprise which has created or
3 will create substantial employment opportunities. The term may
4 include warehouses, terminal facilities and office buildings
5 utilized as national or regional headquarters or computer or
6 clerical operations centers.

7 "Industrial park." Land areas acquired, including existing
8 buildings previously erected thereon, excluding existing
9 buildings, if any, improved and prepared by an industrial
10 development agency in accordance with plans and specifications
11 as approved by the Liberty Financing Authority as sites for the
12 establishment thereon of two or more industrial development
13 projects.

14 "Issuing authority." As defined in section 3 of the act of
15 July 11, 1990 (P.L.465, No.113), known as the Tax Increment
16 Financing Act.

17 "Local development district." Multicounty economic and
18 community development organizations established under the act of
19 December 7, 1994 (P.L.845, No.120), known as the Local
20 Development District Act, to provide regional planning and
21 development services to improve the economy and quality of life
22 in their respective regions through a variety of activities,
23 including, but not limited to, the fostering of public and
24 private partnerships and providing assistance to businesses.

25 "Manufacturing enterprise." An enterprise which is engaged
26 in the giving of new shapes, new qualities or new combinations
27 to matter by the application of skill and labor.

28 "Multiple-tenancy building project." Any land, site,
29 structure, facility or undertaking acquired or constructed by an
30 industrial development agency for occupancy by two or more

1 industrial enterprises, manufacturing enterprises, research and
2 development enterprises, agricultural producers or agricultural
3 processors, as those terms are defined in this chapter.

4 "Municipal authority." A public authority created under 53
5 Pa.C.S. Ch. 56 (relating to municipal authorities) or under the
6 former act of May 2, 1945 (P.L.382, No.164), known as the
7 Municipality Authorities Act of 1945.

8 "Municipality." Any city, borough, town or township of the
9 Commonwealth, each of which political subdivisions are separate
10 incorporated municipalities of the Commonwealth for the purposes
11 of this chapter.

12 "Natural disaster." As defined in 35 Pa.C.S. § 7102
13 (relating to definitions).

14 "Normal agricultural operation." As defined in the act of
15 June 10, 1982 (P.L.454, No.133), referred to as the Right-to-
16 Farm Law.

17 "Obligee of the authority." Any of the following:

18 (1) A holder or owner of bonds of the Liberty Financing
19 Authority, the Commonwealth Financing Authority, the
20 Pennsylvania Industrial Development Authority or the
21 Pennsylvania Minority Business Development Authority.

22 (2) A trustee or other fiduciary for any holder or owner
23 of bonds of the Liberty Financing Authority or its
24 predecessors.

25 (3) A provider of a letter of credit, policy of
26 municipal bond insurance or other credit enhancement or
27 liquidity facility for bonds of the Liberty Financing
28 Authority or its predecessors.

29 (4) A lessor or installment seller demising property to
30 the Liberty Financing Authority or its predecessors in

1 connection with a project.

2 (5) A provider of an interest rate management agreement
3 or other agreement or arrangement authorized under section
4 1714 (relating to powers).

5 "Pennsylvania-related company." A business entity which has
6 significant operations in this Commonwealth or which will, as a
7 condition of any agreement under this chapter, locate
8 significant business operations in this Commonwealth.

9 "Philadelphia metropolitan statistical area." The
10 Philadelphia, Pennsylvania, metropolitan division of the
11 Philadelphia-Camden-Wilmington, Pennsylvania-New Jersey,
12 Delaware-Maryland metropolitan statistical area as announced on
13 June 6, 2003, by the United States Office of Management and
14 Budget under standards for defining metropolitan and
15 micropolitan statistical areas by the Office of Management and
16 Budget for the 2000 decennial census of the United States Bureau
17 of the Census as published in the Federal Register, Vol. 65, No.
18 249, on December 27, 2000, comprising the Pennsylvania counties
19 of Philadelphia, Delaware, Bucks, Montgomery and Chester.

20 "Pollution control technology project." The acquisition,
21 construction or installation of pollution control technology and
22 equipment that enables an electric generating unit or
23 cogeneration unit to meet any of the following requirements:

24 (1) Mercury emission reductions.

25 (2) The regulations adopted by the United States
26 Environmental Protection Agency known as the Clean Air
27 Mercury Rule codified at 40 CFR Pts. 60 (relating to
28 standards of performance for new stationary sources), 72
29 (relating to permits regulation) and 75 (relating to
30 continuous emission monitoring).

1 (3) Nitrogen oxides and sulfur dioxide emission
2 reduction under 25 Pa. Code Chs. 121 (relating to interstate
3 pollution transport reduction) and 145 (relating to general
4 provisions).

5 (4) The Clean Air Interstate Rule in 40 CFR Pt. 96
6 (relating to NOX budget trading program and CAIR NOX and SO2
7 trading programs for state implementation plans).

8 "Predecessors." The Pennsylvania Industrial Development
9 Authority or the Pennsylvania Minority Business Development
10 Authority.

11 "Private developer." A person or entity engaged in the
12 development of real estate and determined by the Liberty
13 Financing Authority to be financially responsible to assume all
14 obligations proposed to be undertaken.

15 "Production agriculture." The management and use of a normal
16 agricultural operation for the production of a farm commodity.

17 "Project user." A person, political subdivision, municipal
18 authority, Commonwealth agency or other entity that owns, leases
19 or uses all or any part of a project.

20 "Redevelopment authority." An entity created under the act
21 of May 24, 1945 (P.L.991, No.385), known as the Urban
22 Redevelopment Law.

23 "Research and development enterprise." An enterprise for the
24 discovery of new and the refinement of known substances,
25 processes, products, theories and ideas. The term does not
26 include enterprise activities directed primarily to the
27 accumulation or analysis of commercial, financial or mercantile
28 data.

29 "Server." A device on a computer network that manages
30 network resources, including devices to manage network traffic,

1 store files or process database queries.

2 "Server virtualization technology." The practice of hosting
3 a software operating system within a virtual machine.

4 "Site preparation project." The construction of water and
5 sewer lines, storm water systems, excavation, construction of
6 access roads, parking facilities, pipelines, transformers and
7 utility transmission lines and traffic control devices.

8 "Small business." A for-profit enterprise that employs fewer
9 than 100 persons, in the aggregate, on an annual basis.

10 "Supermarket." A retail store operated on a self-service
11 basis, primarily selling groceries, fresh produce, meat, bakery
12 and dairy products. The term does not include a convenience
13 store.

14 "Tourism." Any activity which promotes or encourages
15 individuals to travel to a location within this Commonwealth for
16 pleasure.

17 "Virtual machine." A self-contained software operating
18 environment that operates within a server and simulates a
19 hardware device, such as a computer or a server.

20 "Working capital." Capital used by a small business for
21 operations, excluding fixed assets and production machinery and
22 equipment.

23 SUBCHAPTER B

24 STRUCTURE AND POWERS

25 Sec.

26 1711. Authority.

27 1712. Board.

28 1713. Duties.

29 1714. Powers.

30 1715. Limitation.

1 § 1711. Authority.

2 (a) Establishment.--There is established an authority to be
3 known as the Liberty Financing Authority. The authority shall be
4 an instrumentality of the Commonwealth and a body corporate and
5 politic, with corporate succession.

6 (b) Governance.--The authority shall be governed by the
7 board. The powers of the authority shall be exercised by the
8 board.

9 (c) Indebtedness.--The authority may incur indebtedness,
10 including through the issuance of bonds, in an amount which
11 shall not exceed the aggregate amount of indebtedness assumed by
12 the authority from its predecessors, indebtedness of prior
13 programs assumed by the authority and unused bond authorizations
14 of its predecessors. Indebtedness in the form of refinancings of
15 existing indebtedness of the authority or its predecessors shall
16 not be counted against such limitation on the authority's
17 indebtedness. The term of indebtedness shall not exceed 20
18 years. Net proceeds from the sale of obligations incurred under
19 this chapter shall be allocated for programs under Subchapter E
20 (relating to programs) and for the payment of all reasonable
21 costs and expenses related to the issuance.

22 (d) Expenses.--Expenses of the authority shall be paid from
23 assets or income of the authority. Except as provided in this
24 chapter or by other law, the Commonwealth shall not be
25 responsible for funding the expenses of the authority.

26 (e) Fiscal year.--The fiscal year of the authority shall be
27 the same as the fiscal year of the Commonwealth.

28 (f) Existence and dissolution.--

29 (1) The authority shall exist until terminated by law.

30 (2) The authority may be dissolved by law if all

1 outstanding liabilities of the authority, including bonds and
2 other contractual obligations, have been fully paid, retired,
3 satisfied or discharged or provision has been made for
4 payment of all outstanding liabilities of the authority,
5 including bonds and other contractual obligations. Upon the
6 dissolution of the authority, all funds, assets and other
7 property of the authority shall vest in the Commonwealth.

8 (g) Procurement.--The authority shall be considered as an
9 executive agency for the purposes of 62 Pa.C.S. Pt. I (relating
10 to Commonwealth Procurement Code), except that the authority
11 shall have the authority to procure its own services. When
12 acting as its own purchasing agency for the procurement of
13 services, the authority shall use the procedures provided under
14 62 Pa.C.S. Pt. I.

15 (h) Commonwealth Attorneys Act.--The authority shall be
16 considered an executive agency for the purposes of the act of
17 October 15, 1980 (P.L.950, No.164), known as the Commonwealth
18 Attorneys Act.

19 (i) Relationship with department.--

20 (1) The department shall provide administrative services
21 and staff, including staff legal counsel, to the authority
22 and the board. The authority shall reimburse the department
23 for the costs of such services and staff.

24 (2) The authority may enter into agreements with the
25 department setting forth their respective rights and
26 obligations in carrying out their respective duties under
27 this chapter, as well as rates of reimbursement, as
28 applicable, for providing services under this subsection.

29 (j) Applicability.--The following acts shall apply to the
30 authority and the board:

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

3 (2) The act of February 14, 2008 (P.L.6, No.3), known as
4 the Right-to-Know Law.

5 (3) The provisions of 65 Pa.C.S. Chs. 7 (relating to
6 open meetings) and 11 (relating to ethics standards and
7 financial disclosure).

8 § 1712. Board.

9 (a) Members.--

10 (1) The authority shall be governed by a board
11 consisting of 15 members.

12 (2) The following public officials shall serve as
13 members of the board:

14 (i) The Secretary of Community and Economic
15 Development.

16 (ii) The Secretary of Agriculture.

17 (iii) The Secretary of Banking.

18 (iv) The Secretary of the Budget.

19 (3) Eleven individuals from the private sector shall
20 serve as members of the board. Members appointed under this
21 paragraph shall not be members or staff of the General
22 Assembly and shall not be otherwise employed by the
23 Commonwealth. Three members from the private sector shall be
24 appointed by the Governor and two members shall be appointed
25 by each of the following:

26 (i) The President pro tempore of the Senate.

27 (ii) The Minority Leader of the Senate.

28 (iii) The Speaker of the House of Representatives.

29 (iv) The Minority Leader of the House of
30 Representatives.

1 (b) Delegation of authority.--Public officials who are
2 members of the board pursuant to subsection (a)(2) may designate
3 a member of their staff to serve in their absence.

4 (c) Terms.--

5 (1) Public officials shall serve for the duration of
6 their tenure in office.

7 (2) Members appointed under subsection (a)(3) shall
8 serve for terms of four years, subject to the pleasure of the
9 appointing authority, except that board members appointed
10 under subsection (a)(3)(i), (ii), (iii) and (iv) shall serve
11 for initial terms of two years.

12 (3) Members appointed to fill a vacancy created
13 otherwise than by expiration of a term shall be appointed for
14 the unexpired term of the preceding member.

15 (d) Organization.--

16 (1) The Governor shall appoint one member of the board
17 to act as chairperson.

18 (2) The members shall select from among themselves such
19 other officers as they shall determine.

20 (e) Board action.--

21 (1) The board shall meet at the call of the chairperson.

22 (2) Eight members of the board shall constitute a
23 quorum. When a quorum is present, a majority of those present
24 shall be necessary to take any action on behalf of the
25 authority.

26 (f) Compensation.--Members of the board shall be entitled to
27 no compensation for their services, but shall be entitled to
28 reimbursement for all necessary and reasonable expenses incurred
29 in connection with the performance of their duties as members of
30 the board.

1 (g) Fiduciary relationship.--The members of the board and
2 the professional personnel of the board shall stand in a
3 fiduciary relationship with the Commonwealth and the authority
4 as to the moneys in the accounts of the authority and
5 investments of the authority.

6 (h) Standard of care.--The members of the board, in
7 performance of their duties under this chapter, shall exercise
8 the standard of care required by 20 Pa.C.S. Ch. 73 (relating to
9 municipalities investments).

10 (i) Liability.--Members of the board shall not be liable
11 personally on any obligations of the authority, including bonds
12 of the authority. The authority shall provide liability
13 insurance for the members of the board.

14 § 1713. Duties.

15 (a) General rule.--The authority shall:

16 (1) Administer the programs described in Subchapter E
17 (relating to programs).

18 (2) Fund the programs described in Subchapter E using
19 the resources available under this chapter.

20 (3) Adopt bylaws and guidelines for each program listed
21 in Subchapter E as proposed by the department. Guidelines
22 shall include applicable policies and procedures, program
23 criteria, application requirements and any other necessary
24 and relevant information.

25 (b) Reports and publications.--

26 (1) Within 90 days of the effective date of this
27 chapter, the authority shall submit for publication in the
28 Pennsylvania Bulletin and on the Internet website of the
29 department notification of the programs to be administered
30 under this chapter. The notification shall include the name

1 and brief description of each program, the name of a contact
2 person and the anticipated time that funding, applications
3 and official guidelines will become available.

4 (2) The authority shall submit for publication in the
5 Pennsylvania Bulletin the program guidelines adopted under
6 subsections (c) and (d) and shall maintain the guidelines on
7 the department's Internet website.

8 (3) The authority shall, each year by the first day of
9 March, publish and deliver to the Governor and the General
10 Assembly a memorandum which shall outline the authority's
11 goals and planned investments for the coming fiscal year.

12 (4) The authority shall annually post and maintain on
13 the Internet website of the department an annual report,
14 which at a minimum shall include:

15 (i) A list of all grants, loans, reimbursements or
16 rebates approved during the previous fiscal year.

17 (ii) The name and business address of each
18 recipient, including the name of a contact person for the
19 recipient.

20 (iii) The amount and terms of the grant or loan.

21 (iv) A brief description of the project for which
22 the grant or loan was awarded. The description shall
23 include the commitment for the number of jobs created and
24 retained and the total capital investment for the
25 project.

26 (c) Audit.--

27 (1) The authority shall have the accounts and books of
28 the authority audited annually by an independent certified
29 public accounting firm.

30 (2) The authority shall, by December 31 of each year,

1 file a copy of the audit required by paragraph (1) with the
2 Secretary of the Senate, the Chief Clerk of the House of
3 Representatives and the Office of the Budget.

4 (d) Cooperation.--The authority shall cooperate with the
5 Office of Inspector General in the performance of its duties,
6 including, but not limited to, the investigation of fraud,
7 waste, misconduct or abuse in the programs, operations or
8 contracting of the authority.

9 § 1714. Powers.

10 The authority may:

11 (1) Borrow money, issue and assume bonds, obtain lines
12 and letters of credit, provide loan guarantees and incur
13 debt.

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

16 (3) Establish accounts necessary or desirable for its
17 corporate purposes.

18 (4) Transfer funds as necessary and desirable to
19 effectuate the purposes of the programs set forth in
20 Subchapter E (relating to programs).

21 (5) Retain accountants, auditors and financial experts
22 to render services and engage the services of other advisors,
23 consultants and agents as necessary.

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

28 (7) Invest money of the authority not required for
29 immediate use, including proceeds from the sale of bonds, as
30 the board determines, subject to any agreement with

1 bondholders stated in the authorizing resolution providing
2 for the issuance of bonds.

3 (8) Contract and execute all instruments, including
4 financing agreements, letter of credit agreements, liquidity
5 agreements, guarantees, sureties, mortgages, loans, standby
6 loan commitments and contracts of insurance which are
7 necessary or appropriate for carrying on the business of the
8 authority.

9 (9) Impose and collect charges in connection with loan
10 commitments and servicing, including reimbursement of costs
11 of financing.

12 (10) Pledge the credit of the authority and provide
13 security and liquidity to obligees of the authority as the
14 authority deems necessary or appropriate.

15 (11) Use or pledge an account for a special purpose,
16 including debt service reserves and other reserves, as may be
17 necessary or desirable to carry out its powers and duties.

18 (12) With the advice of a financial management firm
19 selected by the board, negotiate and enter into interest rate
20 cap agreements, interest rate management agreements, collar
21 agreements, corridor agreements, ceiling agreements, floor
22 agreements, forward agreements, float agreements and other
23 similar arrangements which, in the judgment of the authority,
24 will assist the authority in managing the interest costs of
25 the authority.

26 (13) Certify industrial development agencies in
27 accordance with guidelines adopted and published by the
28 authority.

29 (14) Use moneys, excluding the proceeds of bonds, to pay
30 the administrative expenses of the authority and of the

1 department incurred under this chapter.

2 (15) Employ an executive director.

3 (16) Employ legal counsel or provide a reimbursement
4 agreement for legal services by legal counsel for the
5 Department of Community and Economic Development.

6 (17) Adopt, use and alter a corporate seal.

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

8 (19) Negotiate modifications or alterations to financing
9 agreements, mortgages or security interests.

10 (20) Foreclose on a mortgage or security interest in
11 default.

12 (21) Commence any action necessary to protect or enforce
13 any right conferred upon the authority by law, mortgage,
14 security agreement, contract or other agreement.

15 (22) Bid for or purchase property that was the subject
16 of a mortgage or security interest at a foreclosure or other
17 sale and acquire and take possession of that property.

18 (23) Sell, mortgage, pledge, encumber, transfer, convey
19 and dispose of any property, whether tangible or intangible.

20 (24) Acquire and sell loans, mortgages and security
21 interests at public or private sale.

22 (25) Provide financial assistance to applicants and
23 project users.

24 (26) Agree to and comply with conditions attached to
25 Federal or Commonwealth assistance not inconsistent with the
26 provisions of this chapter.

27 (27) Make rules regarding the operation of properties
28 and facilities of the authority subject to agreements with
29 obligees of the authority.

30 (28) Develop, adopt and implement binding policies or

1 guidelines assuring that all persons are accorded equal
2 opportunity in employment and contracting associated with the
3 programs established under Subchapter E. This paragraph
4 includes the authority's contractors, subcontractors,
5 assignees, lessees, agents, vendors and suppliers.

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

8 (30) Procure insurance against any loss in connection
9 with its programs, property and other assets.

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

14 (32) Enter into agreements with applicants and project
15 users providing, among other things, for any of the
16 following:

17 (i) Financial assistance.

18 (ii) Loan, rental or purchase price payments or
19 other payments, sufficient to amortize the principal,
20 interest and premium, if any, of bonds and contractual
21 obligations of the authority incurred to provide funds to
22 pay the costs of the projects being financed.

23 (iii) The applicants or project users to pay or
24 cause to be paid all other costs of acquiring,
25 constructing, maintaining and operating the projects
26 being financed.

27 (iv) Conveyance with or without consideration of any
28 part or all of a project being financed to the project
29 user or applicant on or before payment of all bonds and
30 contractual obligations of the authority incurred with

1 respect to the project.

2 (v) Other matters as are customary or as are deemed
3 necessary and appropriate by the authority.

4 (33) Undertake any action appropriate or necessary to
5 effectuate the purposes of this chapter, or to exercise the
6 powers set forth in this section, including any act
7 reasonably implied from those powers.

8 (34) Transfer funds to the Commonwealth Financing
9 Authority established under Chapter 15 (relating to
10 Commonwealth Financing Authority) with the approval of a
11 super-majority of the board of the Commonwealth Financing
12 Authority. The authority may approve a transfer to the
13 Commonwealth Financing Authority by acting under section
14 1712(e) (relating to board).

15 § 1715. Limitation.

16 Except upon foreclosure or default under a loan made under
17 this chapter, the authority shall not approve an application or
18 finance a project if it would be required to operate, service or
19 maintain the project.

20 SUBCHAPTER C

21 BONDS

22 Sec.

23 1721. Bond issuance.

24 1722. Commonwealth and local taxation.

25 1723. Federal taxation.

26 1724. Validity of bonds, limitation on actions.

27 1725. Provisions of bonds, trust agreements.

28 1726. Validity of pledge.

29 1727. Commonwealth pledges.

30 1728. Bonds to be legal investments.

1 1729. Rights and remedies of obligees.

2 § 1721. Bond issuance.

3 (a) Authorization.--The authority may issue limited
4 obligation revenue bonds and other types of limited obligation
5 revenue financing. Bonds of the authority shall be authorized by
6 a resolution of the board, subject to subsection (c).

7 (b) Taxability.--The authority may issue both tax-exempt
8 bonds and taxable bonds to fund the authority's programs.

9 (c) Bond requirements.--Bonds issued by the authority shall:

10 (1) Be of a series.

11 (2) Bear a date or dates.

12 (3) Be in denominations.

13 (4) Be signed by, or bear the facsimile signature of the
14 officer designated by the board.

15 (5) Carry registration, exchangeability and
16 interchangeability privileges.

17 (6) Be payable in any medium of payment and at any place
18 or places.

19 (7) Mature on a date or dates not to exceed 30 years
20 from the original issue date.

21 (8) Be subject to terms of redemption, if any.

22 (d) Issuance.--Bonds issued by the authority may:

23 (1) Be authenticated by an authenticating agent, fiscal
24 agent or trustee.

25 (2) Be in any form, either coupon or fully registered
26 without coupons, or in certificated or book-entry-only form.

27 (3) Bear or accrue interest at any rate or rates,
28 whether fixed or variable.

29 (4) Be issued and delivered notwithstanding the fact
30 that the officer whose signature appears on a coupon may no

1 longer be an authenticating officer at the time of actual
2 delivery.

3 (e) No debt or liability of the Commonwealth.--

4 (1) A bond issued by the authority shall not be a debt
5 or liability of the Commonwealth and shall not create any
6 indebtedness, liability or obligation on the part of the
7 Commonwealth.

8 (2) A bond shall be payable solely from revenues of the
9 authority or accounts pledged or otherwise available for
10 their repayment.

11 (3) A bond shall contain on its face statements that:

12 (i) The authority is obligated to pay the principal
13 of or interest on the bond only from revenues, receipts
14 or funds pledged or available for its payment as
15 authorized in this chapter.

16 (ii) Neither the Commonwealth nor any political
17 subdivision is obligated to pay the principal or
18 interest.

19 (iii) Neither the faith and credit nor the taxing
20 power of the Commonwealth or any political subdivision is
21 pledged to the payment of the principal of or interest on
22 the bonds.

23 (f) Sale.--Bonds may be sold at a public, invited or private
24 sale at a price determined by the authority.

25 (g) Interim receipts.--Pending the preparation of the
26 definitive bonds, interim receipts may be issued to the
27 purchaser or purchasers of the bonds and shall contain the terms
28 and conditions established by the authority.

29 (h) Negotiable instruments.--Bonds of the authority shall
30 have the qualities of negotiable instruments under 13 Pa.C.S.

1 (relating to commercial code).

2 (i) Use.--The authority may, as it deems necessary and
3 desirable, use the proceeds of bonds to:

4 (1) make loans, grants, guarantees and rebates;

5 (2) purchase loans, mortgages, security interests or
6 loan participations;

7 (3) pay incidental expenses in connection with activity
8 under paragraphs (1) and (2), including administrative costs
9 of the authority and the department;

10 (4) pay expenses of authorizing and issuing the bonds;

11 (5) pay principal, redemption or purchase price and
12 interest on bonds; or

13 (6) fund reserves.

14 (j) Refunding.--Subject to the provisions of this chapter,
15 terms of bonds and any contracts entered into pursuant to this
16 chapter, the authority may refund any outstanding debt of the
17 authority whether the debt represents principal or interest, in
18 whole or in part, at any time. For the purposes of this
19 subsection, the term "refund" means the issuance and sale of
20 obligations the proceeds of which are used or are to be used for
21 the payment or redemption of outstanding obligations upon or
22 prior to maturity.

23 § 1722. Commonwealth and local taxation.

24 (a) Authority.--Because the authority, as a public
25 instrumentality of the Commonwealth, will be performing
26 essential governmental functions in effectuating the purposes of
27 this chapter, the authority shall not be subject to taxation or
28 assessment upon any property acquired or used or permitted to be
29 used by the authority for its purposes.

30 (b) Bonds.--Bonds issued by the authority, the transfer and

1 the income from the bonds, including any profit made on the sale
2 of such bonds, shall be free from State and local taxation
3 within this Commonwealth. The exclusion under this subsection
4 shall not extend to gift, estate, succession or inheritance
5 taxes, or any other taxes not levied or assessed directly on the
6 bonds, their transfer, the income from the bonds or the
7 realization of profits on their sale.

8 § 1723. Federal taxation.

9 (a) Allocation.--If the bonds issued by the authority for a
10 project are tax-exempt bonds for which Federal law requires an
11 allocation, the department may issue an allocation upon receipt
12 of a written request by the authority. An allocation must be
13 issued by the department prior to the approval of the resolution
14 authorizing the issuance of the bonds by the authority.

15 (b) Approval.--If gubernatorial approval is required by
16 Federal or State law, the Governor may approve the issuance of
17 bonds upon receipt of written request for approval from the
18 authority. The written request must contain all of the
19 following, to the extent required by Federal law:

20 (1) A statement that the authority has conducted a
21 public hearing, with appropriate public notice, concerning
22 the purposes for which the bonds are to be issued.

23 (2) A description of the project or projects to be
24 financed.

25 (3) A description of the method of financing the project
26 or projects.

27 (4) A summary of the comments made and questions posed
28 at the public hearing.

29 § 1724. Validity of bonds, limitation on actions.

30 (a) Presumption.--Bonds reciting in substance that they have

been issued by the authority to accomplish the public purposes of this chapter shall be conclusively deemed in any suit, action or proceeding involving the validity or enforceability of the bonds or their security to have been issued for the public purposes of this chapter.

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

§ 1725. Provisions of bonds, trust agreements.

A resolution authorizing the issuance of bonds or any trust agreement approved in or by a resolution authorizing the issuance of bonds may contain provisions which do any of the following:

(1) Secure the bonds.

(2) Establish a covenant as to any of the following:

(i) Additional bonds to be issued and terms, conditions and limitations on such bonds.

(ii) Rank or priority of bonds with respect to liens or security interests.

(iii) Limitations on the authority's right to sell, pledge or otherwise dispose of bonds or notes of governmental units, loan agreements or other property.

(iv) Custody, application, investment and disposition of proceeds of bonds.

(v) Incurring of other debts or obligations by the authority.

(vi) Payment of principal of or interest on bonds.

(vii) Sources and methods of payment.

1 (viii) Redemption, purchase and tender of bonds by
2 the authority or the bondholders and the privilege of
3 exchange of the bonds for other bonds.

4 (ix) Use, investment and disposition of the money
5 held in special funds, accounts or reserves.

6 (x) Use of any or all of the authority's real or
7 personal property.

8 (xi) Warrant of title to the authority's real or
9 personal property.

10 (xii) Pledging or granting a security interest in
11 all or any part of the authority's revenues or any part
12 of its property to which its right or title exists or
13 which may later come into existence.

14 (3) Establish a covenant against any of the following:

15 (i) Permitting or suffering any lien on all or any
16 part of its revenues or property.

17 (ii) Extending the time for the payment of bonds or
18 interest.

19 (4) Provide for any of the following:

20 (i) Replacement of lost, stolen, destroyed or
21 mutilated bonds.

22 (ii) Maintenance of the authority's real and
23 personal property.

24 (iii) Replacement of the authority's real and
25 personal property.

26 (iv) Insurance to be carried on the authority's real
27 and personal property and the use and disposition of the
28 insurance proceeds.

29 (v) Rights, liabilities, powers and duties arising
30 upon the breach of any covenant, condition or obligation.

1 (vi) Letters of credit, bond insurance and other
2 facilities for credit enhancement and liquidity.

3 (5) Prescribe:

4 (i) Procedures, if any, by which the terms of any
5 contract with bondholders may be amended or abrogated.

6 (ii) The percentage of the principal amount of bonds
7 the holders of which must consent to the amendment or
8 abrogation of any contract.

9 (iii) The manner in which the consent under
10 subparagraph (ii) may be given.

11 (iv) Events of default.

12 (v) Terms and conditions upon which any or all of
13 the bonds become or may be declared due and payable
14 before stated maturity following an event of default.

15 (vi) Terms and conditions upon which the declaration
16 of default and its consequence may be waived.

17 (6) Create or authorize the creation of special funds or
18 accounts to be held in trust or otherwise for the benefit of
19 bondholders or of reserves for debt service or other
20 purposes.

21 (7) Vest in a trustee any property, rights, powers and
22 duties in trust for the benefit of bondholders.

23 (8) Limit the rights, powers and duties of a trustee,
24 and the right of bondholders to appoint a trustee.

25 (9) Establish the terms and conditions upon which a
26 trustee or the bondholders may enforce a covenant or rights
27 securing or relating to the bonds.

28 (10) Exercise all or any part or combination of the
29 powers granted in this chapter.

30 (11) Do or refrain from doing any other act and thing

1 necessary, convenient or desirable in order to better secure
2 the bonds of the authority or, in the absolute discretion of
3 the authority, as will tend to make bonds of the authority
4 more marketable. This paragraph applies notwithstanding that
5 the covenant, act or thing may not be specifically enumerated
6 in this chapter as long as the covenant, act or thing is in
7 accordance with the intent of this chapter.

8 (12) Pay the costs or expenses incident to any of the
9 foregoing.

10 § 1726. Validity of pledge.

11 A pledge of or grant of a security interest in revenues or
12 instruments made by the authority shall be valid and binding
13 from the time when the pledge is made or, where applicable, when
14 the authority enters into a written agreement to request the
15 applicable appropriation from the department. The revenues,
16 receipts, money, funds or other property or instruments pledged
17 and later received by the authority shall immediately be subject
18 to the lien of the pledge or security interest without any
19 physical delivery of the property pledged or further act. The
20 lien of the pledge or security interest shall be valid and
21 binding as against all parties having claims of any kind in
22 tort, contract or otherwise against the authority irrespective
23 of whether the parties have notice of the lien, pledge or
24 security interest. No instrument by which a pledge or security
25 interest is created, evidenced or noticed need be recorded or
26 filed to perfect the pledge or security interest except in the
27 records of the authority.

28 § 1727. Commonwealth pledges.

29 (a) Bondholders.--The Commonwealth pledges to and agrees
30 with each obligee of the authority that the Commonwealth will

1 not limit or alter the rights and powers vested in the authority
2 or otherwise created by this chapter in any manner inconsistent
3 with the obligations of the authority to its obligees until all
4 bonds at any time issued, together with the interest on the
5 bonds, are fully paid and discharged.

6 (b) Lessees.--The Commonwealth pledges and agrees with any
7 person that, as owner of property which is leased or subleased
8 to or from the authority, it will not limit or alter the rights
9 and powers vested in the authority or otherwise created by this
10 chapter in any manner which impairs the obligations of the
11 authority until all the obligations of the authority under the
12 lease or sublease are fully met and discharged.

13 § 1728. Bonds to be legal investments.

14 (a) Investments.--Bonds issued pursuant to this chapter
15 shall constitute securities in which any person or entity may
16 properly and legally invest funds, including capital, deposits
17 or other funds in their control or belonging to them.

18 (b) Deposits.--Bonds issued by the authority are securities
19 which may properly and legally be deposited with and received by
20 a government agency for any purpose for which the deposit of
21 bonds or other obligations of the Commonwealth are authorized by
22 law.

23 § 1729. Rights and remedies of obligees.

24 The rights and remedies conferred upon or granted to obligees
25 of the authority pursuant to this chapter shall be in addition
26 to and not in limitation of rights and remedies lawfully granted
27 to obligees of the authority by the resolution providing for the
28 issuance of bonds or by any trust agreement or other agreement
29 under which the bonds may be issued or secured.

30 SUBCHAPTER D

1 ACCOUNTS

2 Sec.

3 1731. Establishment of accounts.

4 1732. Deposits.

5 1733. Use.

6 1734. Account restrictions.

7 § 1731. Establishment of accounts.

8 There are established the following accounts:

9 (1) The Small Business First Account.

10 (2) The Community Economic Development Account.

11 (3) The Export Financing Account.

12 (4) The Pennsylvania Industrial Development Account.

13 (5) The Machinery and Equipment Loan Account.

14 (6) The Disadvantaged Business Development Account.

15 § 1732. Deposits.

16 Loan repayments, recaptured funds and bond proceeds from the
17 programs described in Subchapter E (relating to programs), as
18 well as appropriations, including, without limitation, those
19 appropriations made prior to the effective date of this act for
20 the same programs or similar programs to those described in
21 Subchapter E (relating to programs) and any other available
22 funds which are or may become available, not pledged to be
23 deposited or used elsewhere, shall be deposited in the
24 respective program accounts.

25 § 1733. Use.

26 Funds deposited in each of the program accounts shall be made
27 available for additional planning grants, project grants, loans,
28 rebates and other financing tools as provided by the respective
29 programs.

30 § 1734. Account restrictions.

1 (a) Pennsylvania Industrial Development Account.--

2 (1) The Pennsylvania Industrial Development Account,
3 established in section 1731 (relating to establishment of
4 accounts), shall be a revolving fund, whereby all
5 appropriations and payments made into the account, including
6 repayment of loans made to industrial development agencies or
7 funds from mortgages and any other agreements made and
8 entered into by the authority under the program, shall be
9 applied and reapplied to the purposes of the Pennsylvania
10 Industrial Development Program.

11 (2) If at any time the authority determines that funds
12 held in the Pennsylvania Industrial Development Account
13 exceed the amount required to carry out the purposes of the
14 program, the authority shall take such action as may be
15 required to transfer the excess funds to the General Fund of
16 the State Treasury, subject to the provisions of section
17 1771.1 (relating to transfer from Pennsylvania Industrial
18 Development Authority to Liberty Financing Authority).

19 (b) Export Financing Account.--Funds in the Export Financing
20 Account must be continuously secured by a pledge of direct
21 obligations of the United States or of the Commonwealth having
22 an aggregate market value, exclusive of accrued interest, at
23 least equal to the balance on deposit in the account. The
24 securities shall be deposited with the authority to be held by a
25 trustee or agent satisfactory to the authority. Bank and trust
26 companies are authorized to give security under this subsection.

27 SUBCHAPTER E

28 PROGRAMS

29 Sec.

30 1750. Programs generally.

1 1751. Small Business First Program.
2 1752. Community Economic Development Program.
3 1753. Export Financing Program.
4 1754. Pennsylvania Industrial Development Program.
5 1755. Machinery and Equipment Loan Program.
6 1756. Disadvantaged Business Development Program.
7 § 1750. Programs generally.

8 (a) Application process.--Applications for financial
9 assistance under this chapter shall comply with subsection (b)
10 and with any additional requirement of the applicable program or
11 programs. Applications shall be in the form required by the
12 authority and shall bear the applicant's name and address
13 together with a description of the type and amount of financial
14 assistance requested. Upon review of an application, the
15 authority shall notify the applicant of its decision or request
16 additional information or certifications prior to making its
17 decision.

18 (b) Application requirements.--Applications shall include
19 the following information, where applicable:

20 (1) A description of the applicant's business or, if the
21 applicant is not the borrower, the borrower's business,
22 including:

23 (i) The type of business conducted.

24 (ii) The location and age of the business.

25 (iii) A list of all offices of the applicant located
26 in this Commonwealth.

27 (iv) The names and addresses of the principals.

28 (v) The number of current employees and an estimate
29 of future employment.

30 (2) A description of the project, including:

1 (i) The location.

2 (ii) The total estimated project cost, prepared by
3 an engineer or other qualified professional, where
4 appropriate, and the identification of all sources of
5 capital for the project.

6 (iii) A legal description of all real property held
7 or to be acquired for the establishment of the project.

8 (iv) A general description and statement of value of
9 any real or personal property of the applicant and, if
10 applicable, the buyer or tenant of the project, to be
11 applied to the establishment of the project.

12 (3) A statement that the project is consistent with any
13 existing comprehensive county plan where the project is
14 located.

15 (4) A statement that notification of the project has
16 been sent to the governing bodies of the county or counties
17 and of the municipality or municipalities in which the
18 project is located.

19 (5) A firm commitment from the intended project user to
20 use the project upon completion.

21 (6) Proof that the applicant has secured any required
22 planning and permit approvals for the project.

23 (7) A brief description of the anticipated economic
24 impact to this Commonwealth and the host municipality as a
25 result of the project.

26 (8) Any such plans and other documents as may be
27 required to show the type, structure and general character of
28 the project.

29 (9) Any information required by the program or programs
30 under which financial assistance may be provided.

1 (10) (Reserved).

2 (11) Any other information required by the authority.

3 (c) Review and approval.--

4 (1) In reviewing applications, the authority shall
5 consider the following, where applicable:

6 (i) Whether the value of the proposed collateral and
7 the financial resources offered by the applicant are
8 sufficient to repay the loan.

9 (ii) Whether the project will enable future
10 employment opportunities in or have a net positive
11 economic impact on the surrounding community.

12 (iii) Whether the statement of the estimated cost of
13 the project is reasonable.

14 (iv) Whether the sources of financial commitments
15 for funds in excess of the amount requested under this
16 chapter are reliable.

17 (v) Whether the applicant has complied with any
18 terms required by the applicable program or programs
19 listed under the corresponding sections of this chapter.

20 (vi) Whether the applicant has a history of
21 investment in Pennsylvania-related companies.

22 (vii) Whether the applicant has demonstrated strong
23 relationships with organizations in this Commonwealth
24 which foster economic development.

25 (viii) Whether the applicant has a strong
26 performance record.

27 (ix) Whether the applicant has demonstrated an
28 ability to meet and satisfy debt service, if applicable,
29 as it becomes due and payable.

30 (x) Any other information deemed relevant by the

1 authority.

2 (2) Subject to any applicable limitations under this
3 chapter, the amount, duration, interest rate, security
4 required and any other terms of the loan shall be set at the
5 discretion of the authority based upon its determination of
6 the potential financial risk to the Commonwealth.

7 (3) No loan or grant shall be approved if the proceeds
8 would be used to:

9 (i) refinance any portion of the total cost of a
10 capital development project, pollution prevention
11 infrastructure or other existing loans or debt;

12 (ii) finance a project located outside the
13 geographic boundaries of this Commonwealth;

14 (iii) relocate a business to another part of this
15 Commonwealth, unless approved in advance by the authority
16 which shall consider the negative economic impact on the
17 community that the business is leaving; or

18 (iv) provide funds, directly or indirectly, for
19 payment distribution or as a loan to owners, partners or
20 shareholders of a small business, except as ordinary
21 compensation for services rendered.

22 (4) (i) The terms of all agreements for financial
23 assistance awarded under this chapter shall include any
24 material terms, requirements or other conditions provided
25 for agreements entered into under this chapter. The
26 authority may impose other terms and conditions if it
27 determines they are in the best interests of this
28 Commonwealth, including a provision requiring collateral
29 for any penalty which may be imposed.

30 (ii) Upon approving an application for a loan, the

1 authority shall draw an advance equal to the principal
2 amount of the loan from the appropriate account or
3 accounts; and prior to providing loan funds to the
4 applicant, the authority shall require the applicant to
5 execute a note and to enter into a loan agreement and any
6 other agreement as the authority shall require.

7 (d) Reporting and inspection.--An applicant for or a
8 recipient of a loan, loan guarantee or grant made under this
9 chapter shall, upon request:

10 (1) Permit the authority to inspect its premises, books
11 and records.

12 (2) Provide updated information to the authority if
13 conditions change to the extent that the information
14 originally given becomes inaccurate or misleading.

15 (3) Provide the authority with any periodic financial
16 reports and audits that the authority may require.

17 (e) Penalties.--

18 (1) If a grant provides for improvements on a site of a
19 private facility that has or will be receiving additional
20 economic development assistance or job creation tax credits
21 from the Commonwealth, the contract shall include a provision
22 that ensures that if the facility is closed or the facility
23 or business is sold within five years after the approval of
24 the application, the Commonwealth shall request reimbursement
25 of the grant and shall place a lien for that amount on the
26 real property of that facility to remain on the real property
27 until the Commonwealth receives reimbursement.

28 (2) The authority or department, as applicable, may, by
29 foreclosure, take title to a capital development project,
30 purchase first mortgages and make payments on first mortgages

1 on a capital development or lease a capital development if
2 necessary to protect a loan made under this chapter. The
3 authority or department may sell, transfer, convey and assign
4 the first mortgages and shall deposit any money derived from
5 the sale of any first mortgages in the applicable program
6 account.

7 § 1751. Small Business First Program.

8 (a) General rule.--The Small Business First Program shall
9 provide low-interest loans and lines of credit to small
10 businesses for capital development projects that will stimulate
11 the expansion and assist in the viability of small businesses,
12 thereby creating new jobs and retaining existing jobs in this
13 Commonwealth.

14 (b) Application.--In addition to the requirements listed in
15 section 1750(b) (relating to programs generally), the
16 application shall include the following:

17 (1) A description of the capital development project,
18 including the following:

19 (i) The number of employment opportunities to be
20 created or preserved by the proposed capital development
21 project.

22 (ii) If the applicant is an agricultural producer, a
23 demonstration that there is a substantial likelihood that
24 the project will enhance the agricultural operation.

25 (2) A financial commitment from a responsible source for
26 any cost of the project in excess of the amount requested.

27 (3) A demonstration of the ability of the applicant to
28 meet and satisfy the debt service as it becomes due and
29 payable.

30 (4) The existence and sufficiency of collateral for the

1 loan.

2 (c) Conditions and restrictions.--A loan made under this
3 section may:

4 (1) Finance the development, construction, renovation or
5 acquisition of land, buildings, machinery or equipment or may
6 be used for working capital.

7 (2) Not exceed 50% of the total capital development
8 project costs. For the purposes of this paragraph, capital
9 development project costs incurred during the 12-month period
10 prior to the date of submission of the application to the
11 authority shall be considered part of the total capital
12 development project costs.

13 (d) Loan terms.--The following terms shall apply:

14 (1) A loan for real property shall have a repayment
15 period of up to 15 years.

16 (2) A loan for machinery and equipment shall have a
17 repayment period of up to ten years.

18 (3) A loan or line of credit for working capital shall
19 have a repayment period of up to three years.

20 (4) If, in a capital development project, two or more
21 uses are planned, the loan terms may be combined.

22 (5) The interest rate shall be determined by the
23 authority.

24 (6) The authority shall determine the job retention or
25 job creation requirements of each project financed in whole
26 or in part through a loan made under this section.

27 (7) All loans shall be secured by lien positions on
28 collateral at the highest level of priority, as determined by
29 the authority.

30 (e) Penalty for noncompliance.--In the event that a loan

recipient fails to create or preserve the number of employment opportunities specified in the approved application, the authority shall impose a penalty equal to an increase of up to 5% above the existing loan interest rate for the remainder of the loan, unless it determines that the failure is due to circumstances outside the control of the loan recipient.
§ 1752. Community Economic Development Program.

(a) General rule.--The Community Economic Development Program shall provide loans for small businesses located in distressed communities which are involved in the business-to-public service, mercantile, commercial or point-of-sale retail sectors in order to enhance the economic well-being of the community by employing residents of the community and by providing products or services to that community.

(b) Conditions and restrictions.--The following shall apply:

(1) A loan for land, buildings, machinery, equipment or working capital may not exceed 50% of the total capital development project costs. For the purposes of this paragraph, capital development project costs incurred during the 12-month period prior to the date of submission of the application to the authority shall be considered part of the total capital development project costs.

(2) Each capital development project shall meet the job retention or job creation requirements established by the authority.

(3) The maximum loan amount available under this program will be set by the authority.

(4) No loans shall be approved if the proceeds of the loan would be used to provide funds for speculation in real or personal property, whether tangible or intangible.

1 (c) Loan terms.--The following terms shall apply:

2 (1) A loan for real property shall have a repayment
3 period of up to 15 years.

4 (2) A loan for machinery and equipment shall have a
5 repayment period of up to ten years.

6 (3) A loan or line of credit for working capital shall
7 have a repayment period of up to three years.

8 (4) All loans shall be secured by lien positions on
9 collateral at the highest level of priority, as determined by
10 the authority.

11 (d) Application.--In addition to the requirements listed in
12 section 1750(b) (relating to programs generally), the
13 application shall include the following:

14 (1) A financial commitment from a responsible source for
15 the cost of the capital development project in excess of the
16 amount requested.

17 (2) A demonstration that the capital development project
18 will have a direct impact on the community in which the
19 capital development project is or will be located, on
20 residents of that community or on the local and regional
21 economy. The authority shall establish criteria that will
22 assist in making this demonstration.

23 (3) A projection of the number of employment
24 opportunities to be created or preserved by the proposed
25 capital development project.

26 (e) Penalty for noncompliance.--In the event that a loan
27 recipient fails to create or preserve the number of employment
28 opportunities specified in the approved application, the
29 authority shall impose a penalty equal to an increase of up to
30 5% above the existing rate for the remainder of the loan, unless

it determines that the failure is due to circumstances outside
the control of the loan recipient.

§ 1753. Export Financing Program.

(a) General rule.--The Export Financing Program shall
provide loans and lines of credit to export businesses for
working capital and accounts receivable financing, in order to
increase the level of foreign exports and the number of
Pennsylvania companies exporting goods and services.

(b) Application.--In addition to the requirements listed in
section 1750(b) (relating to programs generally), the
application shall include the following:

(1) The number of employment opportunities to be created
or preserved by the proposed capital development project.

(2) A financial commitment from a responsible source for
any cost of the capital development project in excess of the
amount requested.

(3) A statement that the loan, if approved, would not
supplant funding from private sector sources on commercially
reasonable terms.

(4) A demonstration that the applicant will be able to
meet and satisfy the debt service as it becomes due and
payable.

(5) The existence and sufficiency of collateral for the
loan.

(c) Conditions and restrictions.--

(1) The maximum loan amount, repayment period and
interest rate available under this program will be set by the
authority.

(2) The authority may, in its discretion, require any of
the following:

1 (i) That the applicant be eligible for an export
2 credit insurance policy for small businesses offered by
3 the Ex-Im Bank.

4 (ii) That the export credit sales contract be
5 insured by an export credit insurance policy offered by
6 the Ex-Im Bank.

7 (iii) That the loan be guaranteed by the working
8 capital guaranty program offered by the Ex-Im Bank.

9 (3) No loan shall be approved if the proceeds of the
10 loan would be used to provide funds for speculation in real
11 or personal property, whether tangible or intangible.

12 (4) All loans shall be secured by lien positions on
13 collateral at the highest level of priority, as may be
14 determined by the authority.

15 (d) Penalty for noncompliance.--In the event that a loan
16 recipient fails to create or preserve the number of employment
17 opportunities specified in the approved application, the
18 authority shall impose a penalty equal to an increase of up to
19 5% above the existing loan interest rate for the remainder of
20 the loan, unless it determines that the failure is due to
21 circumstances outside the control of the loan recipient.

22 § 1754. Pennsylvania Industrial Development Program.

23 (a) General rule.--The Pennsylvania Industrial Development
24 Program shall provide loans to industrial development agencies
25 for industrial development projects, industrial parks and
26 multiple-tenancy building projects in order to increase
27 employment levels and the overall economic health of this
28 Commonwealth.

29 (b) Loans for industrial development projects.--The
30 authority may contract to loan to an industrial development

1 agency an amount not to exceed 50% of the cost of establishing
2 the industrial development project, subject, however, to the
3 following conditions:

4 (1) Prior to the making of any loan under this
5 paragraph, the authority shall determine that:

6 (i) The project will be owned by, sold or leased to
7 an owner, buyer or tenant which is responsible to assume
8 all obligations imposed by the authority in connection
9 with the project, financial or otherwise, and to
10 undertake the operation of the project.

11 (ii) There will be sufficient income from any sales
12 or lease agreement between the industrial development
13 agency and a buyer or tenant of the project to ensure the
14 repayment of the loan made pursuant to this paragraph.

15 (iii) The industrial development agency or the
16 owner, buyer or tenant has obtained from other
17 independent and responsible sources a firm commitment for
18 any funds which, in addition to the loan made pursuant to
19 this paragraph and any other property or assets held by
20 the industrial development agency, owner, buyer or
21 tenant, shall be necessary for the completion and
22 operation of the project.

23 (2) The industrial development agency or the owner,
24 buyer or tenant of the project must provide at least 10% of
25 the cost of establishing the project through its own equity
26 or through financing secured by a subordinate lien on the
27 project.

28 (3) The authority shall determine the interest rate and
29 repayment period of any loan made under this section.

30 (4) A loan made under this section shall be evidenced by

1 note of the industrial development agency, and secured by a
2 mortgage on the project for which such loan was made, second
3 only to the mortgage securing the first lien obligation
4 issued to secure the commitment of funds provided to pay the
5 cost of the project from the aforesaid independent and
6 responsible sources, and used in the financing of the
7 project.

8 (5) The authority may require such additional security
9 it may deem necessary.

10 (c) Loans for industrial parks.--The authority may contract
11 to loan to an industrial development agency an amount not to
12 exceed 60% of the cost of establishing an industrial park
13 project, subject to the following conditions:

14 (1) The industrial development agency must provide at
15 least 10% of the cost of establishing the industrial park
16 project through its own equity or financing secured by a
17 subordinate lien on the project.

18 (2) The authority shall determine the interest rate and
19 repayment period of any loan made under this subsection.

20 (3) A loan made under this section shall be evidenced by
21 note of the industrial development agency and secured by a
22 first mortgage on the industrial park or by participation in
23 a first mortgage. If, however, a Federal agency is
24 participating in the financing of the industrial park, the
25 authority may take as security for its loan a mortgage on the
26 industrial park which is second only to the mortgage given to
27 the Federal agency.

28 (4) If a loan made under this section is secured by
29 participation in a first mortgage on the industrial park, a
30 portion of the loan, not to exceed 10% of the cost of the

1 project, may be secured by a second mortgage on the
2 industrial park which is second only to the participating
3 first mortgage.

4 (d) Loans for multiple-tenancy building projects.--The
5 authority may contract to loan to an industrial development
6 agency an amount not to exceed 40% of the cost of establishing
7 the multiple-tenancy building project, subject, however, to the
8 following conditions:

9 (1) The industrial development agency must provide at
10 least 10% of the cost of establishing the project through its
11 own equity or financing secured by a subordinate lien on the
12 project.

13 (2) The authority shall determine the interest rate and
14 repayment period of any loan made under this section.

15 (3) A loan made under this section shall be evidenced by
16 note of the industrial development agency and secured by a
17 first mortgage on the multiple-tenancy building project.

18 (4) The authority may contract to loan an amount not to
19 exceed 40% of the cost of the project if the loan is secured
20 by a first mortgage or participation in a first mortgage on
21 the project; otherwise, the authority may contract to loan an
22 amount not to exceed 30% of the cost of the project.

23 (5) If a loan made under this section is secured by a
24 participation in a first mortgage on the project, the
25 authority may permit a portion of its loan, not to exceed 10%
26 of the cost of the project, to be secured by a second
27 mortgage on the project which is second only to the
28 participating first mortgage.

29 (e) Application.--In addition to the requirements listed in
30 section 1750(b) (relating to programs generally), the

1 application shall include the following:

2 (1) A general description of the type, classes and
3 number of employees employed or to be employed in the
4 operation of the project.

5 (2) The cost or estimate of the cost of establishing the
6 project. As used in this section, "cost" shall include
7 financing charges, including interest incurred prior to and
8 during construction, but shall not include the cost of any
9 machinery, equipment or fixtures necessary for the project or
10 the installation or maintenance of any such machinery,
11 equipment or fixtures.

12 (3) Financial statements of the industrial development
13 agency, the proposed buyer or tenant of the project, as
14 applicable, parent companies and proposed guarantors, if any,
15 for the latest three years of operations, prepared by an
16 independent certified public accountant.

17 (4) Evidence of the arrangement made by the industrial
18 development agency and the buyer or tenant of the project, as
19 applicable, for the financing of all costs of the project
20 over and above the participation of the authority.

21 (5) Evidence that the establishment of the project will
22 not cause the removal of an industrial enterprise,
23 manufacturing enterprise, research and development
24 enterprise, agricultural producer or agricultural processor
25 from one area of the Commonwealth to another area of the
26 Commonwealth, as determined by the authority.

27 (f) Employment projection audits.--The authority shall
28 implement a procedure to determine whether the employment
29 projections set out in the loan application are achieved.

30 § 1755. Machinery and Equipment Loan Program.

1 (a) General rule.--The Machinery and Equipment Loan Program
2 shall provide loans to businesses involved in industrial
3 processes, manufacturing, mining, production agriculture,
4 information technology or biotechnology for the purchase,
5 installation or upgrade of equipment and machinery, including
6 computer hardware and software.

7 (b) Application.--In addition to the requirements listed in
8 section 1750(b) (relating to programs generally), the
9 application shall include the following:

10 (1) A demonstration that the applicant is able to meet
11 and satisfy all debt service as it becomes due and payable.

12 (2) Evidence of available and sufficient collateral,
13 including satisfactory lien positions on real and personal
14 property.

15 (3) Sufficient evidence that funds shall be used only to
16 acquire and install new equipment and machinery or upgrade
17 existing equipment and machinery, including the acquisition,
18 application and utilization of computer hardware and
19 software.

20 (4) The number of net employment opportunities to be
21 created by the proposed project unless the business is
22 involved in production agriculture.

23 (5) Evidence that the loan project will increase the
24 business's competitiveness within its respective industry.

25 (c) Loan terms and limitations.--The following shall apply:

26 (1) No loan shall exceed \$5,000,000 or 50% of the cost
27 of the project, whichever is less.

28 (2) Loan terms shall not exceed ten years in duration.

29 (3) Proceeds of loans made under this section may not be
30 used for speculation in any kind of property, real or

1 personal, tangible or intangible.

2 (4) Loans shall be made only for projects that
3 demonstrate a significant likelihood of resulting in job
4 creation or retention, as established by the authority. This
5 paragraph does not apply to loans made to business
6 enterprises involved in production agriculture.

7 (d) Security.--All loans shall be secured by no less than a
8 second lien position on the equipment purchased and other
9 sufficient collateral as determined by the authority.

10 (e) Penalty for noncompliance.--In the event that a loan
11 recipient fails to create or preserve the number of employment
12 opportunities specified in the approved application, the
13 authority shall impose a penalty equal to an increase of up to
14 5% above the existing rate for the remainder of the loan, unless
15 it determines that the failure is due to circumstances outside
16 the control of the loan recipient.

17 § 1756. Disadvantaged Business Development Program.

18 (a) General rule.--The Disadvantaged Business Development
19 Program shall provide financial assistance to businesses owned
20 by socially and economically disadvantaged persons.

21 (b) Application.--In addition to the requirements listed in
22 section 1750(b) (relating to programs generally), the
23 application shall include the following:

24 (1) A statement that the applicant is a United States
25 citizen, resident of this Commonwealth and member of a group
26 or groups which have suffered disadvantages arising from
27 chronic racial, ethnic or economic circumstances.

28 (2) An explanation as to how the applicant's ability to
29 compete in the free enterprise system has been impaired due
30 to diminished capital and credit opportunities, as compared

1 to others in the same or a similar line of business, and are
2 not socially and economically disadvantaged.

3 (c) Loan terms and conditions.--The authority shall have the
4 power to lend money to and to guarantee, endorse or act as
5 surety on the bonds, notes, contracts or other obligations of,
6 or otherwise financially assist a business owned by a person who
7 meets the criteria in subsection (a), and to establish and
8 regulate the terms, security and conditions with respect to any
9 such loans or financial assistance and the charges for interest
10 and service connected therewith.

11 SUBCHAPTER F

12 MISCELLANEOUS PROVISIONS

13 Sec.

14 1771. Definitions.

15 1771.1 Transfer from Pennsylvania Industrial Development

16 Authority to Liberty Financing Authority.

17 1772. (Reserved).

18 1773. Transfer from Pennsylvania Minority Business Development

19 Authority to Liberty Financing Authority.

20 1774. Successorship and transfer of assets and liabilities.

21 § 1771. Definitions.

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

25 "Account." The Pennsylvania Industrial Development Account.

26 The term shall include any similar account established by a
27 successor to the Liberty Financing Authority that assumes the
28 obligations under the Pennsylvania Industrial Development
29 Authority bond indenture.

30 "Debt." Notes, instruments and other evidences of

indebtedness or obligations which were issued prior to the effective date of this section for the same programs or similar programs to those described under Subchapter E (relating to programs) and under the following:

(1) The act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

(2) The act of July 22, 1974 (P.L.598, No.206), known as the Pennsylvania Minority Business Development Authority Act.

(3) 12 Pa.C.S. Chs. 23 (relating to small business first) and 29 (relating to machinery and equipment loans).

"Debt instrument." Any trust instrument or indenture or other financial instrument pursuant to which debt was issued, incurred or secured.

"Program." The Pennsylvania Industrial Development Program. The term shall include any similar program established by a successor to the Liberty Financing Authority that assumes the obligations under the Pennsylvania Industrial Development Authority bond indenture.

"Prior programs." Except for programs transferred under sections 1771.1 (relating to transfer from Pennsylvania Industrial Development Authority to Liberty Financing Authority) and 1773 (relating to transfer from Pennsylvania Minority Business Development Authority to Liberty Financing Authority), the same programs or similar programs to those described under Subchapter E (relating to programs) and created under the following acts which are repealed, in whole or in part, pursuant to this chapter:

(1) The act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority

1 Act.

2 (2) The act of July 22, 1974 (P.L.598, No.206), known as
3 the Pennsylvania Minority Business Development Authority Act.

4 (3) 12 Pa.C.S. Chs. 23 (relating to small business
5 first) and 29 (relating to machinery and equipment loans).

6 § 1771.1. Transfer from Pennsylvania Industrial Development
7 Authority to Liberty Financing Authority.

8 (a) (Reserved).

9 (b) Designation of Liberty Financing Authority as successor
10 to Pennsylvania Industrial Development Authority.--The Liberty
11 Financing Authority, as a public instrumentality of the
12 Commonwealth, shall be and is designated as successor to
13 Pennsylvania Industrial Development Authority. The separate
14 existence of the Pennsylvania Industrial Development Authority
15 shall cease.

16 (c) Transfer of assets and liabilities of Pennsylvania
17 Industrial Development Authority.--The following shall occur:

18 (1) The following shall be taken and deemed to be
19 transferred to and vested in the Liberty Financing Authority,
20 subject to any pledge in favor of the holders of bonds:

21 (i) All of the real, personal and mixed property and
22 all interests in the property of the Pennsylvania
23 Industrial Development Authority, including loans to
24 industrial development agencies and property acquired as
25 a result of foreclosures or in lieu of foreclosures of
26 mortgages securing the loans.

27 (ii) Any debts or amount due to the Pennsylvania
28 Industrial Development Authority.

29 (iii) The Pennsylvania Industrial Development
30 Authority's right, title and interest in and to revenues

1 pledged to secure bonds, the interests of the
2 Pennsylvania Industrial Development Authority under trust
3 instruments securing its bonds, including the right to
4 issue obligations pursuant to and secured by the
5 instruments, sinking funds on deposit and all funds
6 deposited under trust instruments, leaseholds and rights
7 and deposits under the trust instruments.

8 (iv) Rights under interest rate exchange agreements
9 and other financial instruments.

10 (v) Appropriations.

11 (vi) All other rights and assets of the Pennsylvania
12 Industrial Development Authority of any nature.

13 (2) (i) The Liberty Financing Authority shall succeed
14 to, assume and become liable for all liabilities and
15 obligations of the Pennsylvania Industrial Development
16 Authority, including the bonds and the Pennsylvania
17 Industrial Development Authority bond indenture,
18 obligations under interest rate exchange agreements and
19 other financial instruments, contracts for purchase of
20 goods or services and other liabilities of any nature.

21 (ii) The liabilities and obligations under subparagraph
22 (i) shall be subject to the same limitations as were
23 applicable to the Pennsylvania Industrial Development
24 Authority prior to the transfer of assets and liabilities,
25 including limitations as to payment source, pledges,
26 assignments, liens, charges, terms and conditions.

27 (iii) The transfer of assets and liabilities to the
28 Liberty Financing Authority as successor are assumed by the
29 Liberty Financing Authority and shall not impair the rights
30 or the security of holders of bonds or other creditors,

1 persons dealing with Pennsylvania Industrial Development
2 Authority, liens upon the property of Pennsylvania Industrial
3 Development Authority or persons holding claims against
4 Pennsylvania Industrial Development Authority.

5 (iv) Any claim existing or action or proceeding pending
6 by or against the Pennsylvania Industrial Development
7 Authority shall be prosecuted to judgment as if the transfer
8 had not taken place or the Liberty Financing Authority may be
9 proceeded against or substituted in its place.

10 (d) Rights and powers.--

11 (1) Nothing under this chapter shall alter or limit the
12 rights and powers vested in the Liberty Financing Authority
13 as successor to the Pennsylvania Industrial Development
14 Authority or otherwise created under the act of May 17, 1956
15 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial
16 Development Authority Act, in any manner inconsistent with
17 the obligations of the Pennsylvania Industrial Development
18 Authority and, after the effective date of this section, the
19 Liberty Financing Authority, to obligees of the Pennsylvania
20 Industrial Development Authority until all bonds issued by
21 the Pennsylvania Industrial Development Authority, together
22 with the interest on the bonds, are fully paid and
23 discharged.

24 (2) Nothing under this chapter shall authorize personal
25 recourse for any claim based on bonds or trust instruments
26 securing the bonds or trust instruments, against any member,
27 officer or employee of the Pennsylvania Industrial
28 Development Authority, either directly or through the
29 Pennsylvania Industrial Development Authority or the Liberty
30 Financing Authority under any constitutional provision,

1 statute or rule of law or by the enforcement of any
2 assessment or penalty or otherwise.

3 (e) Pennsylvania Industrial Development Account and
4 Program.--

5 (1) The provisions of this chapter relating to the
6 account and the program shall apply to the assets and
7 revenues of the Pennsylvania Industrial Development Authority
8 transferring to the Liberty Financing Authority as successor
9 in addition to the assets and revenues arising from the
10 continuing program subsequent to the transfer.

11 (2) The pledge made by the trust instruments securing
12 the Pennsylvania Industrial Development Authority bonds shall
13 apply to revenues of the Liberty Financing Authority from the
14 program and to assets held in the account. No withdrawals
15 from the account may be made except in compliance with the
16 trust instruments securing the Pennsylvania Industrial
17 Development Authority bonds.

18 (f) Definition.--As used in this section, the term "bond"
19 means any bond, note or other financial obligation of the
20 Pennsylvania Industrial Development Authority, including
21 interest rate exchange agreements or other financial instruments
22 related to bonds.

23 § 1772. (Reserved).

24 § 1773. Transfer from Pennsylvania Minority Business
25 Development Authority to Liberty Financing Authority.

26 (a) (Reserved).

27 (b) Designation of Liberty Financing Authority as successor
28 to the Pennsylvania Minority Business Development Authority.--
29 The Liberty Financing Authority, as a public instrumentality of
30 the Commonwealth, shall be and is designated as successor to the

Pennsylvania Minority Business Development Authority. The
separate existence of the Pennsylvania Minority Business
Development Authority shall cease.

(c) Transfer of assets and liabilities of the Pennsylvania
Minority Business Development Authority.--The following shall
occur:

(1) The following shall be taken and deemed to be
transferred to and vested in the Liberty Financing Authority,
subject to any pledge in favor of the holders of bonds:

(i) All of the real, personal and mixed property and
all interests in the property of the Pennsylvania
Minority Business Development Authority, including loans
and other debts owing to the Pennsylvania Minority
Business Development Authority and amounts due to the
Pennsylvania Minority Business Development Authority
under the loans and debts.

(ii) The right, title and interest of the
Pennsylvania Minority Business Development Authority
under bond indentures, including all revenues pledged as
security for the right, title and interest and the right
to issue obligations pursuant to and secured by the bond
indentures, sinking funds on deposit and all funds
deposited under bond indentures, leaseholds and rights
and deposits under bond indentures.

(iii) Appropriations.

(iv) All other rights and assets of the Pennsylvania
Minority Business Development Authority.

(2) (i) The Liberty Financing Authority shall succeed
to, assume and become liable for all liabilities and
obligations of the Pennsylvania Minority Business

1 Development Authority, including the bonds, bond
2 indentures, contracts for purchase of goods or services
3 and other liabilities.

4 (ii) The liabilities and obligations under
5 subparagraph (i) shall be subject to the same limitations
6 as were applicable to the Pennsylvania Minority Business
7 Development Authority prior to the transfer of assets and
8 liabilities, including limitations as to payment source,
9 pledges, assignments, liens, charges, terms and
10 conditions.

11 (iii) The transfer of assets and liabilities to the
12 Liberty Financing Authority as successor are assumed by
13 the Liberty Financing Authority and shall not impair the
14 rights or the security of holders of bonds or other
15 creditors of the Pennsylvania Minority Business
16 Development Authority, persons dealing with the
17 Pennsylvania Minority Business Development Authority,
18 liens upon the property of the Pennsylvania Minority
19 Business Development Authority or persons holding claims
20 against the Pennsylvania Minority Business Development
21 Authority.

22 (iv) Any claim existing or action or proceeding
23 pending by or against the Pennsylvania Minority Business
24 Development Authority shall be prosecuted to judgment as
25 if the transfer had not taken place or the Liberty
26 Financing Authority may be proceeded against or
27 substituted in its place.

28 (d) Rights and powers.--

29 (1) Nothing under this chapter shall alter or limit the
30 rights and powers vested in the Liberty Financing Authority

1 as successor to the Pennsylvania Minority Business
2 Development Authority or otherwise created by the act of July
3 22, 1974 (P.L.598, No.206), known as the Pennsylvania
4 Minority Business Development Authority Act, and, after the
5 effective date of this section, the Liberty Financing
6 Authority, to obligees of the Pennsylvania Minority Business
7 Development Authority until all bonds issued by the
8 Pennsylvania Minority Business Development Authority,
9 together with the interest on the bonds, are fully paid and
10 discharged.

11 (2) Nothing under this chapter shall authorize personal
12 recourse for any claim based on any obligation of the
13 Pennsylvania Minority Business Development Authority,
14 including its bonds or bond indentures, against any member,
15 officer or employee of the Pennsylvania Minority Business
16 Development Authority either directly or through the
17 Pennsylvania Minority Business Development Authority or the
18 Liberty Financing Authority under any constitutional
19 provision, statute or rule of law or by the enforcement of
20 any assessment or penalty or otherwise.

21 (e) Definition.--As used in this section, the term "bond"
22 means bonds, notes and other evidences of indebtedness or
23 obligations which the Pennsylvania Minority Business Development
24 Authority issued under the act of July 22, 1974 (P.L.598,
25 No.206), known as the Pennsylvania Minority Business Development
26 Authority Act.

27 § 1774. Successorship and transfer of assets and liabilities.

28 (a) (Reserved).

29 (b) Transfer of assets and liabilities of prior programs.--

30 The following shall occur:

1 (1) The following shall be taken and deemed to be
2 transferred to and vested in the Liberty Financing Authority,
3 subject to any pledge in favor of the holders of debt:

4 (i) All of the real, personal and mixed property and
5 all interests in the property of the prior programs,
6 including loans and other debts owing to the prior
7 programs and amounts due to the prior programs under the
8 loans and other debts.

9 (ii) The right, title and interest of the prior
10 programs under debt instruments, including all revenues
11 pledged as security for the right, title and interest and
12 the right to issue obligations pursuant to and secured by
13 the debt instruments, sinking funds on deposit and all
14 funds deposited under debt instruments, leaseholds and
15 rights and deposits under the debt instruments.

16 (iii) Appropriations made with respect to the prior
17 programs.

18 (iv) All other rights and assets of the prior
19 programs.

20 (2) (i) The Liberty Financing Authority shall succeed
21 to, assume and become liable for all liabilities and
22 obligations of the prior programs, including the debt,
23 debt instruments, contracts for purchase of goods or
24 services, and other liabilities.

25 (ii) The liabilities and obligations under
26 subparagraph (i) shall be subject to the same limitations
27 as were applicable to the prior programs prior to the
28 transfer of assets and liabilities, including limitations
29 as to payment source, pledges, assignments, liens,
30 charges, terms and conditions.

1 (iii) The transfer of assets and liabilities to the
2 Liberty Financing Authority as successor shall not impair
3 the rights or the security of holders of debt or other
4 creditors of the prior programs, persons dealing with the
5 prior programs, liens upon the property of the prior
6 programs or persons holding claims against the prior
7 programs, all of which are assumed by the Liberty
8 Financing Authority.

9 (iv) Any claim existing or action or proceeding
10 pending by or against the prior programs shall be
11 prosecuted to judgment as if the transfer had not taken
12 place or the Liberty Financing Authority may be proceeded
13 against or substituted in its place.

14 (c) Rights and powers.--

15 (1) Nothing under this chapter shall alter or limit the
16 rights and powers vested in the Liberty Financing Authority
17 as successor to the prior programs or otherwise created by
18 the acts under which the prior programs were initiated in any
19 manner inconsistent with the obligations of the prior
20 programs and, after the effective date of this section, the
21 Liberty Financing Authority, to obligees of the prior
22 programs until all debt at any time issued by the prior
23 programs, together with the interest on the debt, are fully
24 paid and discharged.

25 (2) Nothing under this chapter shall authorize personal
26 recourse for any claim based on any obligation of the prior
27 programs, including without its debt or debt instruments,
28 against any member, officer or employee of the prior programs
29 whether directly or through the prior programs or the Liberty
30 Financing Authority under any constitutional provision,

statute or rule of law or by the enforcement of any
assessment or penalty or otherwise.

Section 4. Any money that has been allocated or appropriated and has been expended prior to the effective date of this section for the same programs or similar programs to those described under 64 Pa.C.S. Ch. 17 Subch. E shall be deducted from the corresponding allocation or appropriation under 64 Pa.C.S. Ch. 17.

Section 5. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the addition of the following provisions of 64 Pa.C.S.:

- (i) Ch. 17 Subch. C.
- (ii) Section 1731(4).
- (iii) Section 1734(a).
- (iv) Section 1754.
- (v) Section 1771.1.

(2) The act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act, is repealed.

(3) The General Assembly declares that the repeal under paragraph (4) is necessary to effectuate the addition of the following provisions of 64 Pa.C.S.:

- (i) Ch. 17 Subch C.
- (ii) Section 1731(6).
- (iii) Section 1756.
- (iv) Section 1773.

(4) The act of July 22, 1974 (P.L.598, No.206), known as the Pennsylvania Minority Business Development Authority Act, is repealed.

1 Section 6. This act continues repealed provisions of the
2 Pennsylvania Consolidated Statutes as follows:

3 (1) The addition of 64 Pa.C.S. §§ 1731(1) and 1751 is a
4 continuation of 12 Pa.C.S. Ch. 23. Except as otherwise
5 provided in 64 Pa.C.S. § 1731(1) or 1751, all activities
6 initiated under 12 Pa.C.S. Ch. 23 shall continue and remain
7 in full force and effect and may be completed under 64
8 Pa.C.S. §§ 1731(1) and 1751. Orders, regulations, rules and
9 decisions which were made under the 12 Pa.C.S. Ch. 23 and
10 which are in effect on the effective date of section 2 {12
11 Pa.C.S. Ch. 23} of this act shall remain in full force and
12 effect until revoked, vacated or modified under 64 Pa.C.S. §
13 1731(1) or 1751. Contracts, obligations and collective
14 bargaining agreements entered into under 12 Pa.C.S. Ch. 23
15 are not affected nor impaired by the repeal of 12 Pa.C.S. Ch.
16 23.

17 (2) The addition of 64 Pa.C.S. §§ 1731(5) and 1755 is a
18 continuation of 12 Pa.C.S. Ch. 29. Except as otherwise
19 provided in 64 Pa.C.S. § 1731(5) or 1755, all activities
20 initiated under 12 Pa.C.S. Ch. 29 shall continue and remain
21 in full force and effect and may be completed under 64
22 Pa.C.S. §§ 1731(5) and 1755. Orders, regulations, rules and
23 decisions which were made under the 12 Pa.C.S. Ch. 29 and
24 which are in effect on the effective date of section 3 {12
25 Pa.C.S. Ch. 29} of this act shall remain in full force and
26 effect until revoked, vacated or modified under 64 Pa.C.S. §
27 1731(5) or 1755. Contracts, obligations and collective
28 bargaining agreements entered into under 12 Pa.C.S. Ch. 29
29 are not affected nor impaired by the repeal of 12 Pa.C.S. Ch.
30 29.

1 Section 7. The addition of 64 Pa.C.S. Ch. 17 Subch. C is a
2 continuation of the act of May 17, 1956 (1955 P.L.1609, No.537),
3 known as the Pennsylvania Industrial Development Authority Act
4 and the act of July 22, 1974 (P.L.598, No.206), known as the
5 Pennsylvania Minority Business Development Authority Act. The
6 following apply:

7 (1) Except as otherwise provided in 64 Pa.C.S. Ch. 17
8 Subch. C, all activities related to bonds initiated under the
9 Pennsylvania Industrial Development Authority Act or the
10 Pennsylvania Minority Business Development Authority Act
11 shall continue and remain in full force and effect and may be
12 completed under 64 Pa.C.S. Ch. 17 Subch. C. Orders,
13 regulations, rules and decisions which were related to bonds,
14 which were made under the Pennsylvania Industrial Development
15 Authority Act or the Pennsylvania Minority Business
16 Development Authority Act and which are in effect on the
17 effective date of section 6 of this act shall remain in full
18 force and effect until revoked, vacated or modified under 64
19 Pa.C.S. Ch. 17 Subch. C. Contracts, obligations and
20 collective bargaining agreements which are related to bonds
21 and which were entered into under the the Pennsylvania
22 Industrial Development Authority Act or the Pennsylvania
23 Minority Business Development Authority Act are not affected
24 nor impaired by the repeal of the the Pennsylvania Industrial
25 Development Authority Act or the Pennsylvania Minority
26 Business Development Authority Act.

27 (2) Any difference in language between 64 Pa.C.S. Ch. 17
28 Subch C and the Pennsylvania Industrial Development Authority
29 Act or the Pennsylvania Minority Business Development
30 Authority Act is intended only to conform to the style of the

Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Pennsylvania Industrial Development Authority Act or the Pennsylvania Minority Business Development Authority Act.

Section 8. The addition of 64 Pa.C.S. §§ 1731(4), 1734(a), 1754 and 1771.1 is a continuation of the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act. The following apply:

(1) Except as otherwise provided in 64 Pa.C.S. § 1731(4), 1734(a), 1754 or 1771.1, all activities initiated under the Pennsylvania Industrial Development Authority Act shall continue and remain in full force and effect and may be completed under 64 Pa.C.S. § 1731(4), 1734(a), 1754 or 1771.1. Orders, regulations, rules and decisions which were made under the Pennsylvania Industrial Development Authority Act and which are in effect on the effective date of section 6(2) of this act shall remain in full force and effect until revoked, vacated or modified under 64 Pa.C.S. § 1731(4), 1734(a), 1754 or 1771.1. Contracts, obligations and collective bargaining agreements entered into under the Pennsylvania Industrial Development Authority Act are not affected nor impaired by the repeal of the Pennsylvania Industrial Development Authority Act.

(2) Any difference in language between 64 Pa.C.S. § 1731(4), 1734(a), 1754 or 1771.1 and the Pennsylvania Industrial Development Authority Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration

1 and implementation of the Pennsylvania Industrial Development
2 Authority Act.

3 Section 9. The addition of 64 Pa.C.S. §§ 1731(6), 1756 and
4 1773 is a continuation of the act of July 22, 1974 (P.L.598,
5 No.206), known as the Pennsylvania Minority Business Development
6 Authority Act. The following apply:

7 (1) Except as otherwise provided in 64 Pa.C.S. §
8 1731(6), 1756 or 1773, all activities initiated under the
9 Pennsylvania Minority Business Development Authority Act
10 shall continue and remain in full force and effect and may be
11 completed under 64 Pa.C.S. §§ 1731(6), 1756 and 1773. Orders,
12 regulations, rules and decisions which were made under the
13 the Pennsylvania Minority Business Development Authority Act
14 and which are in effect on the effective date of section 6(4)
15 of this act shall remain in full force and effect until
16 revoked, vacated or modified under 64 Pa.C.S. §§ 1731(6),
17 1756 and 1773. Contracts, obligations and collective
18 bargaining agreements entered into under the Pennsylvania
19 Minority Business Development Authority Act are not affected
20 nor impaired by the repeal of the Pennsylvania Minority
21 Business Development Authority Act.

22 (2) Any difference in language between 64 Pa.C.S. §§
23 1731(6), 1756 and 1773 and the Pennsylvania Minority Business
24 Development Authority Act is intended only to conform to the
25 style of the Pennsylvania Consolidated Statutes and is not
26 intended to change or affect the legislative intent, judicial
27 construction or administration and implementation of the
28 Pennsylvania Minority Business Development Authority Act.

29 Section 10. This act shall take effect in 60 days.