

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1316 Session of  
2003

INTRODUCED BY BIANCUCCI, MAY 5, 2003

REFERRED TO COMMITTEE ON COMMERCE, MAY 5, 2003

AN ACT

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

33 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

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

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

8 \* \* \*

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

11 \* \* \*

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

14 \* \* \*

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

17 \* \* \*

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

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

1 project facilities, other than projects to be funded by the  
2 oversight committee, shall have been authorized by an industrial  
3 and commercial development authority or a group of industrial  
4 and commercial development authorities or by an industrial  
5 development agency or a group of industrial and development  
6 agencies; (ii) further provided that the financing authority may  
7 issue taxable or tax-exempt bonds on behalf of interagency  
8 projects other than projects to be funded by the oversight  
9 committee only if the applicant has first applied to the  
10 Pennsylvania Infrastructure Investment Authority for financing  
11 under the provisions of the act of March 1, 1988 (P.L.82,  
12 No.16), known as the "Pennsylvania Infrastructure Investment  
13 Authority Act," and the Pennsylvania Infrastructure Investment  
14 Authority in writing refers the applicant to the financing  
15 authority to finance all or part of the interagency project in  
16 accordance with this act; and (iii) further provided that the  
17 issuance by the financing authority of taxable or tax-exempt  
18 bonds for a public facility other than projects to be funded by  
19 the oversight committee, interagency projects and projects for  
20 roads and transportation facilities and transportation systems  
21 of every kind shall have been authorized by a municipality,  
22 municipal authority or Commonwealth agency and only if both the  
23 applicant and the financing authority have determined that the  
24 cost of obtaining the financing for the public facility will be  
25 reduced through the issuance of bonds through the financing  
26 authority. For purposes of the determination required in this  
27 subsection, any financing for a public facility that the  
28 financing authority reasonably believes could have received a  
29 rating of "A" or better from either Moody's Investors Service or  
30 Standard & Poor's Corporation shall be presumed not to be

1 eligible for financing by the financing authority. The financing  
2 authority is authorized and empowered to use the proceeds of any  
3 bonds issued for the making of loans, purchasing loans,  
4 mortgages, security interests or loan participations and paying  
5 all incidental expenses in connection therewith, paying expenses  
6 of authorizing and issuing the bonds, paying interest on the  
7 bonds until revenues thereof are available in sufficient amounts  
8 and funding the reserves as the financing authority deems  
9 necessary and desirable.

10 \* \* \*

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

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

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

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

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

29 (b) In addition to other provisions of this section limiting  
30 the power of the financing authority to make loans or provide

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

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

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

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

29 Section 15.3. Programs.--The Real Estate Development Program  
30 shall provide mezzanine capital through loans or equity capital

made available through professional fund managers under contractual agreement with the oversight committee to financially assist private developers, redevelopers or other real estate development entities engaged in real estate projects to develop, redevelop or revitalize real estate assets in small to mid-sized Commonwealth communities.

(1) The oversight committee may make investments which meet the standard of prudence set forth in section 15.5(d) by providing funds to partnerships that develop real estate projects within this Commonwealth.

(2) The oversight committee may invest in one or more such partnerships or comparable investment entities if:

(i) the investment guidelines and strategies of each partnership or investment entity require that all investments will be made in this Commonwealth; and

(ii) the partnership or investment entity agrees to operate under a prudent expert standard of care.

(iii) The liability of the oversight committee shall be limited to the amount of its investment under this clause.

(iv) The oversight committee may commit up to two hundred fifty million dollars (\$250,000,000) in first round funds to this program if the oversight committee investment is matched on at least a dollar-for-dollar basis with private funds.

(v) The oversight committee shall establish the types of project investments which may be made by a partnership or investment entity utilizing oversight committee funds.

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

1     (1) The Governor.

2     (2) The State Treasurer.

3     (3) The Secretary of the Budget.

4     (4) The secretary.

5     (5) The Secretary of Banking.

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

8     (i) One member appointed by the President pro tempore of the  
9 Senate.

10    (ii) One member appointed by the Minority Leader of the  
11 Senate.

12    (iii) One member appointed by the Speaker of the House of  
13 Representatives.

14    (iv) One member appointed by the Minority Leader of the  
15 House of Representatives.

16    (7) Four members appointed by the Governor.

17    (b) Terms of members shall be as follows:

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

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

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

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

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

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

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

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

20    (2) To control and manage, invest and reinvest money  
21    received from bond financing, from repayments and redeposits or  
22    from any other source derived and dedicated for use in programs  
23    financed by the oversight committee and for all expenses  
24    associated with the program. Funds may be deposited by the  
25    oversight committee in banks or trust companies in special  
26    accounts for use by the oversight committee as set forth in this  
27    clause, including the use of interest earned on the accounts.  
28    Money in the accounts shall be paid out on order of the  
29    oversight committee. Funds deposited by the oversight committee  
30    in special accounts in banks or trust companies may be prudently



1 invested in any of the following:

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

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

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

12 (iv) Repurchase agreements underlying purchased securities  
13 of which consist of investments set forth in clause (1), (2) or  
14 (3).

15 (v) Money market funds:

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

19 (B) the portfolio of which consists only of dollar-  
20 denominated securities.

21 (3) To hold, purchase, sell, lend, assign, transfer or  
22 dispose of any category of securities and investments, in which  
23 money dedicated for use in programs financed by the oversight  
24 committee has been invested, and the proceeds of such  
25 investments.

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

30 (5) To make loans and other capital available to private

developers, redevelopers or other real estate development entities engaged in real estate projects for redevelopment or revitalization of real estate located within this Commonwealth and to provide for the repayment of such loans and investments.

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

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

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

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

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

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

Section 15.6. Annual Report.--By November 30, 2004, and annually thereafter, the oversight committee shall submit a

1 report to the Governor and to the chair and minority chair of  
2 the Appropriations Committee of the Senate and the chair and  
3 minority chair of the Appropriations Committee of the House of  
4 Representatives. The report shall provide an analysis of the  
5 status of the current investments and transactions made by the  
6 oversight committee or the department over the previous fiscal  
7 year for the program.

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

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