

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1400

Session of
1987

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AND VEON, MAY 26, 1987

AS REPORTED FROM COMMITTEE ON BUSINESS AND COMMERCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, FEBRUARY 2, 1988

AN ACT

1 Creating the Pennsylvania Industrial Development Finance
2 Corporation.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Pennsylvania
7 Industrial Development Finance Corporation Act.

8 Section 2. Legislative findings and policy.

9 (a) Legislative findings.--The General Assembly finds and
10 declares as follows:

11 (1) There exist in communities throughout this
12 Commonwealth blighted areas which are inimical to the safety,
13 health, morals and welfare of not only the residents of those
14 areas but also of all citizens of this Commonwealth.

15 (2) These conditions decrease the value of private

1 investments and threaten sources of public revenue.

2 (3) Because of the economic and social interdependence
3 of communities, the economic and industrial development of
4 political subdivisions of this Commonwealth is substantially
5 impaired.

6 (4) There exists in this Commonwealth a condition of
7 substantial and persistent unemployment and underemployment
8 seriously aggravated by an unacceptably low level of economic
9 activity in blighted areas.

10 (5) These conditions result in making such blighted
11 areas socioeconomic liabilities harmful to the social and
12 economic well-being of the communities in which they exist by
13 depreciating property values, reducing tax revenues and
14 lowering communitywide values.

15 (6) These conditions cannot be dealt with effectively by
16 private enterprise under existing law without additional
17 alternatives being provided to encourage the stimulation of
18 private investment.

19 (7) The Commonwealth's present mechanism for stimulating
20 industrial development, such as the Pennsylvania Industrial
21 Development Authority and local industrial development
22 authorities, is insufficient to alleviate these conditions.

23 (8) Continued investment by industrial development
24 corporations and agencies in projects in blighted areas is
25 necessary for the development, redevelopment,
26 industrialization or reindustrialization of communities
27 affected by blight.

28 (9) The provision of capital to viable businesses in
29 these areas is necessary to the redevelopment of the areas.

30 (10) These conditions are a menace and are beyond remedy

1 or control solely by regulatory processes in the exercise of
2 the police power and cannot be dealt with effectively by
3 private enterprise under existing law without the additional
4 aids granted by this act.

5 (11) The development, redevelopment, industrialization
6 or reindustrialization of communities according to sound and
7 approved plans will promote public health, safety,
8 convenience and welfare.

9 (12) Increasing the number of development projects in
10 blighted areas, providing capital to industrial development
11 corporations and agencies and to businesses in these areas,
12 and stimulating private investment in these businesses and
13 areas are public purposes and uses for which public money may
14 be expended and invested.

15 (b) Policy.--It is the policy of this Commonwealth to
16 promote the health, safety and welfare of its citizens by the
17 creation of a body corporate and politic to be known as the
18 Pennsylvania Industrial Development Finance Corporation, which
19 shall exist and operate for the public purposes of the
20 development, redevelopment, industrialization or
21 reindustrialization of blighted areas in this Commonwealth.
22 These purposes are hereby declared to be public uses for which
23 public money may be spent.

24 Section 3. Definitions.

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

28 "Capital participation investments." Common and preferred
29 stock, convertible securities, warrants, subscriptions, options
30 to acquire, capital loans, working capital or inventory loans,

1 royalties, and any lawful derivations of the foregoing.

2 "Corporation" or "PIDFC." The Pennsylvania Industrial
3 Development Finance Corporation created by this act.

4 "Costs of a project." Any or all costs associated with the
5 design, planning, acquisition or rehabilitation and
6 implementation of a project undertaken in a target area which
7 can reasonably be recovered in the financing of a project. These
8 include, but are not limited to, the cost of:

9 (1) Construction or rehabilitation.

10 (2) Property rights.

11 (3) Easements and franchises acquired.

12 (4) Financing charges.

13 (5) Interest prior to and during construction.

14 (6) Engineering and legal expenses.

15 (7) Plans, specifications and surveys.

16 (8) Estimates of costs and other expenses necessary or
17 incident to a determination of feasibility, construction,
18 rehabilitation and placing the project in operation.

19 (9) The provision of working capital, seed money and any
20 other costs determined by the directors of the IDC or IDA to
21 be necessary in carrying out the purposes of this act.

22 "Industrial Development Corporation" or "IDC" or "Industrial
23 Development Agency" or "IDA." An authority organized and
24 existing under the act of May 2, 1945 (P.L.382, No.164), known
25 as the Municipality Authorities Act of 1945, or under the act of
26 August 23, 1967 (P.L.251, No.102), known as the Industrial and
27 Commercial Development Authority Law, or a council of
28 governments or similar entity organized and existing under the
29 act of July 12, 1972 (P.L.762, No.180), referred to as the
30 Intergovernmental Cooperation Law, or a nonprofit corporation

1 organized and existing under the laws of this Commonwealth,
2 regardless of the particular name, whose members or shareholders
3 receive no profit, which shall carry out certain public purposes
4 and which, unless otherwise specifically provided by law, has
5 bylaws providing that:

6 (1) It is organized to operate within a specified
7 geographical area coincident with the existing boundaries of
8 any political subdivision or municipality.

9 (2) Membership in the IDC or IDA shall be open to all
10 residents of the specified geographical area who are 18 years
11 of age or older.

12 (3) The IDC and IDA shall have five directors, all to be
13 appointed by the governing body of the political subdivision
14 or municipality, with each director having an equal vote.

15 (4) The directors of the IDC or IDA initially appointed
16 shall continue in office for terms of one to five years,
17 respectively, from the date of their appointment and until
18 their respective successors shall be duly appointed, the
19 terms of each director to be designated by the appointing
20 body at the time of his appointment. Their successors shall
21 be appointed for terms of five years, except that any person
22 appointed to fill a vacancy shall serve only for the
23 unexpired term. A director may be eligible for reappointment.

24 (5) The directors of the IDC or IDA shall be entitled to
25 no compensation for their services as directors but shall be
26 entitled to reimbursement for all necessary expenses incurred
27 in connection with the performance of their duties as
28 directors.

29 "Paid-in capital." All moneys received in return for capital
30 stock of the PIDFC.

1 "PIDA." The Pennsylvania Industrial Development Authority.

2 "Primary employment." Work which pays at least the minimum
3 wage, offers adequate fringe benefits, including health
4 insurance, and is not seasonal or part time.

5 "Project." Any industrial or manufacturing activity or other
6 economic development activity considered an eligible project
7 under the act of August 23, 1967 (P.L.251, No.102), known as the
8 Industrial and Commercial Development Authority Law, OR ANY COAL <—
9 MINING ACTIVITY and undertaken in a target area, designed to
10 reduce conditions of blight, economic depression or widespread
11 reliance on public assistance.

12 "Target area." Any contiguous geographic area in which the
13 board of directors of a particular IDC or IDA finds and
14 designates, in accordance with criteria established by the
15 Pennsylvania Industrial Development Finance Corporation, that
16 substantial conditions of unemployment, economic recession,
17 declining local tax base or curtailment of municipal services,
18 widespread reliance on public assistance or blight as that term
19 is construed in accordance with the act of May 24, 1945
20 (P.L.991, No.385), known as the Urban Redevelopment Law, exist
21 or threaten to exist because of impending economic dislocation
22 in a community, including actual or threatened plant closings or
23 the jeopardy posed by a community's reliance on a single
24 capital-intensive industry.

25 Section 4. Pennsylvania Industrial Development Finance
26 Corporation established.

27 There is hereby created a body corporate and politic, to be
28 known as the Pennsylvania Industrial Development Finance
29 Corporation or PIDFC. The PIDFC is hereby constituted a public
30 instrumentality and the exercise by the PIDFC of the powers

1 conferred by this act shall be deemed to be the performance of
2 an essential governmental function. The PIDFC is hereby placed
3 in the Economic Development Partnership created by Executive
4 Order of the Governor dated February 4, 1987, No.4.

5 Section 5. Powers and duties of directors.

6 (a) Directors.--The corporation shall consist of nine
7 directors. One member shall be the Executive Director of the
8 Economic Development Partnership, one shall be the Secretary of
9 Community Affairs and one shall be the Secretary of Labor and
10 Industry. The Governor shall appoint two members, both of whom
11 shall be residents of target areas or members of industrial
12 development corporations or agencies in such areas. The Majority
13 and Minority Leaders of the Senate and House of Representatives
14 shall each appoint one member.

15 (b) Term.--Each member appointed shall serve a term of five
16 years, except that, in making initial appointments, the Governor
17 shall appoint one member to serve for a term of one year and one
18 member to serve for a term of two years. The Minority Leaders of
19 the Senate and House of Representatives shall each appoint one
20 member to serve for a term of three years each. The Majority
21 Leaders of the Senate and House shall each appoint one member to
22 serve for a term of four years each.

23 (c) Compensation.--The members who are not otherwise
24 employees of the Commonwealth shall each receive a per diem
25 amount of \$200 for attendance at official meetings. Each
26 director shall be entitled to reimbursement for actual and
27 necessary expenses incurred in the performance of his official
28 duties.

29 (d) Vacancies.--Any person appointed to fill a vacancy in
30 the office of a director shall be appointed by the official who

1 appointed his predecessor and shall serve for only the unexpired
2 term. Any member shall be eligible for reappointment. A member
3 may be removed from his appointment by his appointing power only
4 for good cause.

5 (e) Leadership.--The Executive Director of the Economic
6 Development Partnership shall serve as chairman, and another
7 member as vice chairman, and the chairman shall designate a
8 secretary-treasurer who need not be a member of the board.

9 (f) Quorum.--Five of the directors of the corporation shall
10 constitute a quorum and five affirmative votes shall be
11 necessary for the transaction of business or the exercise of any
12 power or function of the corporation.

13 (g) Disclosure.--The corporation, its directors, officers
14 and employees shall be subject to the provisions of section 1 of
15 the act of October 4, 1978 (P.L.883, No.170), referred to as the
16 Public Official and Employee Ethics Law, except that the
17 corporation may purchase from, sell to, borrow from, loan to,
18 contract with or otherwise deal with any public nonprofit
19 industrial development corporation or agency organized to carry
20 out the purposes of this act, of which any director of the
21 corporation is also a member or officer, if such interest is
22 disclosed in advance to members of the board and recorded in the
23 minutes of the corporation and if no director having such a
24 financial interest may participate in any decision affecting
25 such transaction.

26 (h) Corporation president.--The president of the corporation
27 shall be appointed and his salary established by the board of
28 directors. The president shall be the chief administrative and
29 operational officer of the corporation and shall direct and
30 supervise administrative affairs and the general management of

1 the corporation. The president may employ such other employees
2 as shall be designated by the board of directors, shall attend
3 meetings of the board of directors, shall cause copies to be
4 made of all minutes and other records and documents of the
5 corporation and shall certify that such copies are true copies.
6 All persons dealing with the corporation may rely upon such
7 certification.

8 (i) Annual report.--The chairman of the board of directors
9 of the PIDFC shall prepare an annual report of the corporation's
10 activities three months after the end of the fiscal year and
11 submit copies to the Governor, Speaker of the House of
12 Representatives and President pro tempore of the Senate.

13 (j) Audit.--The accounts and books of the PIDFC, including
14 its receipts, disbursements, contracts, mortgages, investments
15 and other matters relating to its finances, operations and
16 affairs, shall be examined and audited, from time to time, by
17 the Auditor General.

18 Section 6. Powers of Pennsylvania Industrial Development
19 Finance Corporation.

20 (a) General powers.--The PIDFC shall have the power to:

21 (1) Adopt bylaws for the regulation of its affairs and
22 the conduct of its business.

23 (2) Adopt an official seal.

24 (3) Sue and be sued in its own name.

25 (4) Make and execute contracts and all other instruments
26 necessary or convenient for the exercise of its powers and
27 functions.

28 (5) Acquire, hold and dispose of personal property for
29 its corporate purposes.

30 (6) Enter into agreements or other transactions with any

1 Federal or State agency.

2 (7) Acquire, sell, transfer or convey real property, or
3 any interest in real property, where the acquisition or
4 transfer protects or secures an investment or loan in which
5 the agency has an interest to lease the property when a sale,
6 transfer or conveyance cannot be effected with reasonable
7 promptness or at a reasonable price.

8 (8) Invest any funds not required for immediate
9 disbursement or funds held in reserves or sinking funds or in
10 investments as may be lawful for fiduciaries in the
11 Commonwealth.

12 (9) Borrow money by making notes and issuing bonds,
13 including tax-exempt revenue bonds, and secure such bonds by
14 the pledge of revenues, mortgages and notes of others.

15 (10) Employ a president, who shall be the chief
16 executive officer of the corporation, and such other agents,
17 employees and professional and business advisers as may, from
18 time to time, be necessary in the judgment of the board of
19 directors, and fix their compensation.

20 (11) Appear in its own behalf before boards,
21 commissions, departments or other agencies of government.

22 (12) Procure insurance against any loss in connection
23 with its property in those amounts, and from those insurers,
24 as may be necessary or desirable.

25 (13) Consent, subject to the provisions of any contract
26 with noteholders or bondholders, whenever it deems it
27 necessary or desirable to fulfill the purposes of this act,
28 to the modification, with respect to rate of interest, time
29 of payment of any installment of principal or interest, or
30 any other terms, of any mortgage, mortgage loan, mortgage

1 loan commitment, contract or agreement of any kind to which
2 the PIDFC is a party.

3 (14) Do any and all things necessary or convenient to
4 carry out its purposes and exercise the powers expressly
5 given and granted in this act.

6 (15) Receive and accept from any Federal or State agency
7 grants, loans or advances for or in aid of the purposes of
8 this act and to receive and accept contributions from any
9 source of either money, property, labor or other things of
10 value, to be held, used and applied for these purposes.

11 (16) Create, issue, buy and sell stock and other capital
12 participation instruments, and hold such stock and capital
13 participation instruments; and underwrite the creation of a
14 capital market for these securities in a manner which
15 provides first offer of resale to the industrial development
16 corporation or agency, business or residents of the target
17 area and which is designed to enhance development of capital
18 ownership in the target area.

19 (17) Provide and pay for such advisory services and
20 technical assistance as may be necessary or desirable to
21 carry out the purposes of this act.

22 (18) Exercise any other powers or rights or
23 responsibilities of a corporation organized under the laws of
24 the Commonwealth.

25 (b) Establishment of program criteria.--The PIDFC shall,
26 within 30 days from the effective date of this act, devise a set
27 of criteria for a definition of "distressed area" in accordance
28 with statistical information gathered by the PIDFC. This
29 criteria shall include, but not be limited to, substantial
30 conditions of unemployment, economic recession, declining local

1 tax base, curtailment of municipal services, widespread reliance
2 on public assistance and blight as that term is used in the act
3 of May 24, 1945 (P.L.991, No.385), known as the Urban
4 Redevelopment Law, caused by severe economic dislocation
5 experienced or threatened to be experienced by plant closings or
6 the jeopardy posed by a community's reliance on a single
7 capital-intensive industry. The criteria may be modified by the
8 PIDFC as circumstances warrant.

9 (c) Catalog of programs.--The PIDFC shall, within 30 days of
10 the effective date of this act, catalog all of the economic
11 development programs currently provided by Federal, State and
12 local governments, including industrial development authority
13 programs, and categorize them according to municipality. In
14 addition, the PIDFC will review all applicable regulations and
15 requirements of these programs, proposing changes where
16 necessary to coordinate the programs provided to industries and
17 communities in this Commonwealth to deliver rapid and
18 streamlined assistance to them. Furthermore, the PIDFC shall
19 devise a method to give quick review and priority to any project
20 of any economic development program, including PIDA, which has
21 been certified by the PIDFC. The catalog of economic development
22 programs compiled by the PIDFC shall be reduced to a
23 comprehensible narrative so that any threatened community or
24 jeopardized industry may ascertain the total range of programs
25 available and then, with the aid of the PIDFC, proceed to secure
26 needed assistance.

27 Section 7. Sale of PIDFC stock and purchase of participation
28 instruments.

29 (a) Authorization of treasurer.--The State Treasurer,
30 subject to appropriation from either the Pennsylvania Economic

1 Revitalization Fund or the Economic Development Partnership
2 created by Executive Order of the Governor dated February 4,
3 1987, or from the issuance of bonds for this purpose, shall
4 purchase shares of the corporation in the amount of \$10,000,000.

5 (b) Shares.--In return for the investment, the Commonwealth
6 shall receive 1,000,000 shares of common stock in the
7 corporation. These shares shall constitute the entire issue of
8 common stock.

9 (c) Eligible investment.--The investment outlined in
10 subsections (a) and (b) shall be an eligible investment for the
11 purposes of 24 Pa.C.S. § 8521(o) (relating to management of fund
12 and accounts) and 71 Pa.C.S. § 5931(p) (relating to management
13 of fund and accounts).

14 (d) Liquidation.--Five years from the effective date of this
15 act, the board of directors of the PIDFC shall assist the State
16 Treasurer in developing a plan for the sale of the shares of
17 common stock held by the Commonwealth, which sale may not take
18 place unless specifically hereafter authorized by statute.

19 (e) Separate account.--The corporation shall hold the
20 proceeds of this investment in an account or accounts separate
21 from other funds. The corporation shall use these proceeds only
22 for the following purposes:

23 (1) To purchase capital participation instruments from
24 industrial development corporations or agencies in return for
25 an investment in a specific project only when the board of
26 the PIDFC finds that the industrial development corporation
27 or agency will use the funds in support of a project
28 consistent with the purposes of this act.

29 (2) To invest funds subject to the terms, conditions,
30 limitations and restrictions imposed by law upon fiduciaries;

1 proceeds of the investments may be used to pay for the normal
2 business expenses of the PIDFC.

3 (3) To make loans to IDC's and IDA's to effect the
4 purposes of this act.

5 (f) Capital participation instruments.--Upon application of
6 an IDC or IDA for a specific project located in a target area,
7 the PIDFC may, subject to the restrictions set forth in this
8 act, agree to purchase capital participation instruments from or
9 make loans to the IDC or IDA, provided that the PIDFC shall find
10 and incorporate in its minutes that:

11 (1) The project is within the scope of this act, is
12 certified by the PIDFC and may reasonably be expected to
13 contribute to the redevelopment of target areas, to the
14 economic development of the Commonwealth or to the increase
15 or maintenance of threatened primary employment.

16 (2) The project plans conform to all applicable
17 environmental zoning, building, planning and sanitation laws.

18 (3) The project will be of public benefit and for a
19 public purpose, and the benefits, including increased
20 employment and improved standard of living, shall accrue
21 primarily to residents of the area served by the IDC or IDA.

22 (4) There is a reasonable expectation that the project
23 will be successful.

24 (5) Private industry has not provided sufficient capital
25 required for the project or sufficient primary employment
26 opportunities in the project area.

27 (6) The PIDFC determines that its participation is
28 necessary to the successful completion of the proposed
29 project because funding for the project is unavailable in the
30 traditional capital markets or because credit has been

1 offered on terms that would preclude the success of the
2 project.

3 (7) The applicant IDC or IDA meets the standards of an
4 IDC or IDA, respectively, as defined herein and appears able
5 to manage its proposed project responsibilities.

6 (8) The proceeds of the purchase or contract will be
7 used solely in connection with the costs of the project.

8 (9) The parties shall contract for adequate reporting of
9 financial data from the IDC or IDA to the PIDFC. Contract
10 provisions may include a requirement for an annual or other
11 periodic audit of the project books.

12 (10) The PIDFC shall not own more than 49% of the voting
13 stock in any project.

14 (11) The IDC or IDA will maintain sufficient control
15 over the project to ensure that public benefit and public
16 purposes are maintained. This determination shall be
17 satisfactorily complied with if any one of the following is
18 satisfied:

19 (i) The project is conducted by a wholly owned
20 subsidiary of the IDC or IDA or by an agent of the IDC or
21 IDA.

22 (ii) The IDC or IDA owns a majority of the capital
23 stock of the corporation or other organization conducting
24 the project, or the assets, whichever is appropriate.

25 (iii) If the entity is an IDC, the IDC owns a
26 majority of the voting stock of the corporation or other
27 organization conducting the project.

28 (iv) The project is conducted by a nonprofit
29 corporation or other association or entity organized
30 under the laws of the Commonwealth to provide public

benefit and which exists for a public purpose.

(v) In all other cases, adequate provision is made for reporting to the IDC or to the IDA, which must approve all major transactions, including, but not limited to, any sale, merger, dissolution, the sale or issue of substantial amounts of stock and corporation reorganization.

(12) Provision has been made that, should the PIDFC desire to sell or otherwise dispose of stock received under a contract, the IDC or IDA or its nominee shall have, within 120 days, the right of first refusal upon the sale and the right to meet any subsequent bona fide offer by a third party.

(13) The PIDFC has not loaned nor invested more than 20% of its lendable or investable resources in any one IDC or IDA, including this investment.

Section 8. Eligibility of obligations of PIDFC for investment of public retirement funds.

Notwithstanding any other law to the contrary, stocks, bonds, notes or other evidence of indebtedness or obligations of the PIDFC shall constitute permissible investments for moneys held by the State Employees' Retirement Fund, pursuant to 71 Pa.C.S. § 5101 et seq. (relating to State government), the Public School Employees' Retirement Fund, pursuant to 24 Pa.C.S. § 8101 et seq. (relating to education) and the Pennsylvania Municipal Retirement Fund, pursuant to the act of February 1, 1974 (P.L.34, No.15), known as the Pennsylvania Municipal Retirement Law.

Section 9. Severability.

The provisions of this act are severable. If any provision of

1 this act or its application to any person or circumstance is
2 held invalid, the invalidity shall not affect other provisions
3 or applications of this act which can be given effect without
4 the invalid provision or application.

5 Section 10. Conflict of law.

6 If the provisions of this act conflict with any other
7 statute, ordinance, regulation or rule, the provisions of this
8 act shall control.

9 Section 11. Effective date.

10 This act shall take effect in 60 days.