

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1727 Session of  
1987

INTRODUCED BY DUFFY, F. TAYLOR, GALLEN, SEVENTY, HAGARTY,  
VAN HORNE, SERAFINI, OLASZ, BURD, J. L. WRIGHT, DORR, GEIST  
AND GODSHALL, SEPTEMBER 29, 1987

REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE,  
SEPTEMBER 29, 1987

AN ACT

1 Amending the act of May 17, 1956 (1955 P.L.1609, No.537),  
2 entitled "An act to promote the welfare of the people of the  
3 Commonwealth by the reduction of unemployment in certain  
4 areas of the Commonwealth determined to be critical economic  
5 areas; providing for the establishment of industrial  
6 development projects in such areas; creating The Pennsylvania  
7 Industrial Development Authority as a body corporate and  
8 politic with power to allocate funds for and make secured  
9 loans to industrial development agencies for the payment of a  
10 part of the cost of industrial development projects in  
11 critical economic areas; authorizing the Authority to enter  
12 into agreements with the Government of the United States or  
13 any Federal agency or industrial development agency;  
14 empowering the Authority to take title to, sell, convey and  
15 lease industrial development projects where necessary to  
16 protect loans made by the Pennsylvania Industrial Development  
17 Authority on industrial development projects; providing that  
18 no debt of the Commonwealth, its municipalities or political  
19 subdivisions shall be incurred in the exercise of any powers  
20 granted by this act; and providing for the examination of the  
21 accounts and affairs of the Authority; and making an  
22 appropriation," adding and amending certain definitions;  
23 permitting certain board members to designate others to  
24 exercise their powers as board members; providing for  
25 forfeiture of a board member's seat for unexcused absences  
26 from meetings; expanding the Authority's powers in the event  
27 of a distressed situation; making editorial changes;  
28 providing for loans for industrial parks and multiple-tenancy  
29 building projects; authorizing the Authority to require  
30 additional security for loans; deleting a requirement that  
31 all loan repayments be deposited in the Industrial  
32 Development Fund; and requiring the Authority to promulgate

1 regulations.

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

4 Section 1. Section 3(d) of the act of May 17, 1956 (1955  
5 P.L.1609, No.537), known as the Pennsylvania Industrial  
6 Development Authority Act, amended May 15, 1980 (P.L.131,  
7 No.49), is amended and clauses are added to read:

8 Section 3. Definitions.--The following terms, whenever used  
9 or referred to in this act, shall have the following meanings,  
10 except in those instances where the context clearly indicates  
11 otherwise:

12 \* \* \*

13 (d) The term "critical economic area" shall mean the area  
14 encompassing any municipality or group of municipalities,  
15 county, group of counties or region of the Commonwealth  
16 reasonably defined by the Authority wherein critical conditions  
17 of unemployment, economic depression, wide-spread reliance on  
18 public assistance and unemployment compensation are found to  
19 exist by the Authority. Prior to determination and designation  
20 of any area of the Commonwealth as a critical economic area the  
21 Authority shall conduct such investigations of the area and of  
22 the records and statistical indices of the Department of Labor  
23 and Industry, as well as the declarations and statistics of any  
24 other State or Federal agencies as shall be necessary to  
25 establish the existence of the above conditions in such area and  
26 to establish that: (i) an average of not less than (6%) of the  
27 labor force of such area has been unemployed for any five years  
28 of the preceding ten years, hereinafter designated "critical  
29 economic area A"; or (ii) an average of not less than (4%) of  
30 the labor force of such area has been unemployed for [a period

1 of not less than twelve months] the preceding calendar year,  
2 hereinafter designated "critical economic area B"; or (iii) an  
3 average of not less than 4% of the labor force of such area has  
4 been unemployed for any five years of the preceding ten years,  
5 hereinafter designated "critical economic area C," immediately  
6 prior to the date of such investigations and findings utilized  
7 by the Authority. No area of the Commonwealth shall be  
8 designated a critical economic area without such investigations  
9 and findings having been first made and certified to in the  
10 permanent records of the Authority. An area of the Commonwealth  
11 having once been designated a critical economic area A or area C  
12 shall remain so for a period of six months following the month  
13 in which it ceases to qualify as a critical economic area as  
14 above defined and designated by the Authority. The Authority may  
15 designate critical economic areas annually for each fiscal year  
16 of the Commonwealth based on investigations and findings for the  
17 previous calendar year, or for periods of less than one year, at  
18 the discretion of the Authority.

19 \* \* \*

20 (t) The term "industrial parks" shall mean land areas  
21 acquired, including existing buildings previously erected  
22 thereon, said land areas, excluding existing buildings, if any,  
23 improved and prepared by industrial development agencies in  
24 accordance with plans and specifications as approved by the  
25 Authority as sites for the establishment thereon of two or more  
26 industrial development projects by industrial development  
27 agencies in a redevelopment area or a critical economic area.

28 (u) The term "multiple-tenancy building project" shall mean  
29 any land, site, structure, facility or undertaking acquired or  
30 constructed for occupancy by two or more industrial enterprises,

1 manufacturing enterprises or research and development  
2 enterprises, as those terms are defined in this act, established  
3 or to be established by an industrial development agency in a  
4 critical economic area.

5 Section 2. Section 4 of the act, amended June 16, 1972  
6 (P.L.475, No.153), is amended to read:

7 Section 4. The Pennsylvania Industrial Development  
8 Authority.--There is hereby created a body corporate and  
9 politic, constituting a public corporation and government  
10 instrumentality by the name of "The Pennsylvania Industrial  
11 Development Authority," the board of members of which shall be  
12 composed of the following: The Secretary of Commerce or his or  
13 her named designee, who will serve as Chairman, the Secretary of  
14 Labor and Industry or his o her named designee, the Secretary of  
15 Community Affairs or his or her named designee, the Secretary of  
16 Agriculture or his or her named designee and the Secretary of  
17 Banking or his or her named designee and their respective  
18 successors in office and seven additional members who shall be  
19 appointed by the Governor with the advice and consent of the  
20 Senate who shall represent the general public and the public  
21 interest. The members of the Authority initially appointed by  
22 the Governor shall continue in office for terms of one to seven  
23 years, respectively, from the date of their appointment and  
24 until their respective successors shall be duly appointed and  
25 qualified, the term of each appointed member to be designated by  
26 the Governor at the time of his appointment; but their  
27 successors shall each be appointed for a term of seven years,  
28 except that any person appointed to fill a vacancy shall serve  
29 only for the unexpired term, and any appointed member of the  
30 Authority shall be eligible for re-appointment. Said members of

1 the Authority shall be entitled to no compensation for their  
2 services as members, but shall be entitled to [reimbursement for  
3 all necessary expenses incurred in connection with the  
4 performance of their duties as members.] receive the amount of  
5 reasonable traveling, hotel and other expenses incurred in the  
6 performance of their duties in accordance with Commonwealth  
7 regulations. An appointed member of the board who fails to  
8 attend three consecutive meetings shall forfeit his or her seat  
9 unless the chairman, upon written request of the member, finds  
10 that the member should be excused from attending a meeting  
11 because of illness or the death of an immediate family member.

12 Section 3. Section 5(h) and (p) of the act, amended July 10,  
13 1963 (P.L.221, No.125), are amended to read:

14 Section 5. Powers of the Authority; General.--The Authority,  
15 as a public corporation and governmental instrumentality  
16 exercising public powers of the Commonwealth, is hereby granted  
17 and shall have and may exercise all powers necessary or  
18 appropriate to carry out and effectuate the purposes of this  
19 act, including the following powers, in addition to others  
20 herein granted:

21 \* \* \*

22 (h) To make, upon proper application of industrial  
23 development agencies, loans to such industrial development  
24 agencies of moneys held in the Industrial Development Fund or  
25 other accounts of the Authority for industrial development  
26 projects in critical economic areas and to provide for the  
27 repayment and redeposit of such allocations and loans in the  
28 manner hereinafter provided;

29 \* \* \*

30 (p) To take title by foreclosure to any industrial

1 development project where such acquisition is necessary to  
2 protect any loan previously made therefor by the Authority and  
3 to pay all costs arising out of such foreclosure and acquisition  
4 from moneys held in the Industrial Development Fund or other  
5 accounts of the Authority and to sell, transfer and convey any  
6 such industrial development project to any responsible buyer; in  
7 the event such sale, transfer and conveyance cannot be effected  
8 with reasonable promptness, the Authority may, in order to  
9 minimize financial losses and sustain employment, lease such  
10 industrial development project to a responsible tenant or  
11 tenants; the Authority shall not lease industrial development  
12 projects except under the conditions and for the purposes cited  
13 in this section.

14 \* \* \*

15 Section 4. Section 6 of the act, reenacted and amended  
16 December 19, 1975 (P.L.591, No.166) and amended May 15, 1980  
17 (P.L.131, No.49), is amended to read:

18 Section 6. Powers of the Authority; Loans to Industrial  
19 Development Agencies.--When it has been determined by the  
20 Authority upon application of an industrial development agency  
21 and hearing thereon in the manner hereinafter provided, that the  
22 establishment of a particular industrial development project of  
23 such industrial development agency in a critical economic area  
24 has accomplished or will accomplish the public purposes of this  
25 act, the Authority may contract to loan such industrial  
26 development agency an amount not in excess of the percentage of  
27 the cost of such industrial development project, as established  
28 or to be established as hereinafter set forth, subject, however,  
29 to the following conditions:

30 (a) Industrial development projects to be established:

1       (1) If the industrial development project is exclusively a  
2 research and development facility other than research and  
3 development of pollution control technology, the Authority may,  
4 in each class of critical economic area, contract to loan the  
5 industrial development agency (45%) of the cost of such  
6 industrial development project if it has determined that the  
7 industrial development agency holds funds or property in an  
8 amount or value equal to not less than (5%) of the cost of  
9 establishing the industrial development project, which funds or  
10 property are available for and shall be applied to the  
11 establishment of such project. If the industrial development  
12 project is exclusively a research and development facility for  
13 technology concerning pollution control, the Authority may  
14 contract to loan the industrial development agency in critical  
15 economic area A an amount not in excess of (55%) and in a  
16 critical economic area B or a critical economic area C an amount  
17 not in excess of (50%) of the cost of the industrial development  
18 project: Provided, however, That in each such instance, the  
19 Authority has determined that the industrial development agency  
20 holds funds or property in an amount or value equal to not less  
21 than (5%) of the cost of establishing the industrial development  
22 project, which funds or property are available for and shall be  
23 applied to the establishment of such project.

24       (2) If the industrial development project is any other type  
25 of industrial development project than exclusively a research  
26 and development facility, the Authority may, in critical  
27 economic area A contract to loan the industrial development  
28 agency an amount not in excess of (40%) of the cost of such  
29 industrial development project if it has determined that the  
30 industrial development agency holds funds or property in an

1 amount or value equal to not less than (10%) of the cost of  
2 establishing the industrial development project, which funds or  
3 property are available for and shall be applied to establishment  
4 of such project.

5 (2.1) Where a contract to loan to an industrial development  
6 agency is to be made under provisions of subsection (a), the  
7 following shall apply: that, in critical economic areas A, B or  
8 C where an average of (8%) or more of the labor force has been  
9 unemployed for the preceding calendar year, the Authority may  
10 contract to loan the industrial development agency an amount not  
11 in excess of (50%) of the cost of an industrial development  
12 project and an amount not in excess of (60%) of the cost of an  
13 industrial development project wherein the responsible buyer or  
14 tenant is a small business on the date of the application; and  
15 where an average of (10%) or more of the labor force has been  
16 unemployed for the preceding calendar year, the Authority may  
17 contract to loan the industrial development agency an amount not  
18 in excess of (60%) of the cost of an industrial development  
19 project and an amount not in excess of (70%) of the cost of an  
20 industrial development project wherein the responsible buyer or  
21 tenant is a small business on the date of application; further,  
22 provided that in each such instance the industrial development  
23 agency project percentage shall be removed. Where a contract to  
24 loan to an industrial development agency is to be made under the  
25 provisions of subsection (a), the following shall apply: that,  
26 in critical economic areas A, B or C where an average of (4%) or  
27 more of the labor force has been unemployed for the preceding  
28 calendar year, the Authority may contract to loan the industrial  
29 development agency an amount not in excess of (40%) of the cost  
30 of an industrial development project wherein the responsible



1 buyer or tenant is a small business and where an average of (6%)  
2 or more of the labor force has been unemployed for the preceding  
3 calendar year, the Authority may contract to loan the industrial  
4 development agency an amount not in excess of (50%) of the cost  
5 of an industrial development project wherein the responsible  
6 buyer or tenant is a small business and in such latter instance  
7 the industrial development agency project percentage shall be  
8 removed.

9 (3) If the industrial development project is any other type  
10 of industrial development project than exclusively a research  
11 and development facility, the Authority may, in critical  
12 economic areas B and C, contract to loan the industrial  
13 development agency an amount not in excess of (30%) of the cost  
14 of such industrial development project if it has determined that  
15 the industrial development agency holds funds or property in an  
16 amount or value equal to not less than (20%) of the cost of  
17 establishing the industrial development project, which funds or  
18 property are available for or shall be applied to the  
19 establishment of such project.

20 (4) Prior to the making of any loan under this subsection  
21 (a), the Authority shall have determined that the industrial  
22 development agency has obtained from other independent and  
23 responsible sources, such as banks and insurance companies or  
24 otherwise, a firm commitment for all other funds, over and above  
25 the loan of the Authority and such funds or property as the  
26 industrial development agency may hold, necessary for payment of  
27 all of the cost of establishing the industrial development  
28 project, and that the sum of all these funds, together with the  
29 machinery and equipment to be provided by the responsible tenant  
30 or responsible buyer, is adequate for the completion and

1 operation of the industrial development project.

2 (b) The Authority may, in critical economic areas A and B,  
3 contract to loan to an industrial development agency an amount  
4 not in excess of (40%) of the cost, and in critical economic  
5 area C, may contract to loan to an industrial development agency  
6 an amount not in excess of (30%) of the cost, of establishing an  
7 industrial development project established without prior  
8 Authority participation, if at the time of making such loan the  
9 Authority has determined:

10 (1) That in critical economic areas A and B, the industrial  
11 development agency has invested in the industrial development  
12 project funds or property in an amount or value equal to not  
13 less than (10%) of the cost of such industrial development  
14 project and all of the costs of establishing said industrial  
15 development project have been paid; and in a critical economic  
16 area C, the industrial development agency has invested in the  
17 industrial development project funds or property in an amount or  
18 value equal to not less than (20%) of the cost of such  
19 industrial development project and all costs of establishing  
20 said industrial development project have been paid.

21 (2) That the industrial development project is leased or  
22 sold to a responsible tenant or purchaser which has supplied the  
23 machinery and equipment necessary for the operation of the  
24 industrial development project and is occupying the same for the  
25 purposes intended.

26 (3) That neither the industrial development agency nor the  
27 responsible tenant or purchaser is in default under any of the  
28 agreements entered into by them in respect of the financing and  
29 operation of the industrial development project.

30 (4) That there is sufficient income from the lease or

1 agreement to purchase with the industrial tenant or industrial  
2 purchaser sufficient to insure the repayment of the loan of the  
3 Authority made pursuant to this subsection (b).

4 (5) The proceeds of the Authority loan to the industrial  
5 development agency made pursuant to this subsection (b) shall be  
6 used only to pay a part of the cost of establishing an  
7 industrial development project in furtherance of the public  
8 purposes of this act.

9 (b.1) Industrial parks:

10 (1) The Authority may contract to loan an amount up to (60%)  
11 of the cost of an industrial park project provided the  
12 industrial development agency contributes not less than (10%) of  
13 the cost of said projects.

14 (2) Loans shall only be made where the said loan of the  
15 Authority is secured by a first mortgage on such industrial park  
16 or is secured by a participation in a first mortgage thereon,  
17 subject to the exception that where a Federal agency is  
18 participating in the financing of an industrial park, the  
19 Authority may take as security for its loan a mortgage on such  
20 industrial park junior in lien only to that of the mortgage  
21 given to the Federal agency. If the Authority's loan is secured  
22 by a participation in a first mortgage on the industrial park,  
23 the Authority may permit a portion of its loan, not exceeding in  
24 amount (10%) of the project cost, to be secured by a second  
25 mortgage on the industrial park which is junior in lien only to  
26 the participating first mortgage securing the balance of the  
27 Authority's loan and the funds borrowed from other independent  
28 and responsible sources.

29 (b.2) Multiple-tenancy building projects:

30 (1) The cost of the project shall include only those items

1 of cost set forth in the definition of "cost of establishing an  
2 industrial development project" in this act.

3 (2) Where this act otherwise would empower the Authority to  
4 contract to loan an amount up to (40%) of the cost of the  
5 project, the Authority may only contract to loan such an amount  
6 if the loan of the Authority is secured by a first mortgage or a  
7 participation in a first mortgage on said project; otherwise the  
8 Authority may contract to loan an amount not in excess of (30%)  
9 of the cost of the project: Provided, however, That if the  
10 Authority's loan is secured by a participation in a first  
11 mortgage on the project, the Authority may permit a portion of  
12 its loan, not exceeding in amount (10%) of the project cost, to  
13 be secured by a second mortgage on the project which is junior  
14 in lien only to the participating first mortgage securing the  
15 balance of the Authority's loan and the funds borrowed from  
16 other independent and responsible sources.

17 Where making a loan in the financing of an industrial park or  
18 a multiple-tenancy building project, the requirements of this  
19 act shall apply unless otherwise provided herein, except the  
20 requirements of this act as to the proposed industrial, research  
21 and development or manufacturing enterprise to be placed thereon  
22 or therein, the proposed employment to be derived therefrom and  
23 the existence of a responsible buyer or responsible tenant  
24 therefor shall not apply.

25 (e) Any such loan of the Authority shall be for such period  
26 of time and shall bear interest at such rate as shall be  
27 determined by the Authority and shall be [secured] evidenced by  
28 bond or note of the industrial development agency and secured by  
29 mortgage on the industrial development project for which such  
30 loan was made, such mortgage to be second and subordinate only

1 to the mortgage securing the first lien obligation issued to  
2 secure the commitment of funds from the aforesaid independent  
3 and responsible sources and used in the financing of the  
4 industrial development project. Loans for industrial parks and  
5 multiple-tenancy building projects shall be secured as provided  
6 in subsections (c) and (d), respectively. The Authority may  
7 require such additional security for its loan as the board may  
8 determine necessary.

9 [(f) Where a contract to loan to an industrial development  
10 agency is to be made under the provisions of subsection (a), the  
11 following shall apply that, in critical economic areas A, B or C  
12 where an average of 8% or more of the labor force has been  
13 unemployed for the preceding calendar year, the Authority may  
14 contract to loan the industrial development agency an amount not  
15 in excess of 50% of the cost of an industrial development  
16 project and an amount not in excess of 60% of the cost of an  
17 industrial development project wherein the responsible buyer or  
18 tenant is a small business on the date of the application; and  
19 where an average of 10% or more of the labor force has been  
20 unemployed for the preceding calendar year, the Authority may  
21 contract to loan the industrial development agency an amount not  
22 in excess of 60% of the cost of an industrial development  
23 project and an amount not in excess of 70% of the cost of an  
24 industrial development project wherein the responsible buyer or  
25 tenant is a small business on the date of application; further,  
26 provided that in each such instance the industrial development  
27 agency project percentage shall be removed. Where a contract to  
28 loan to an industrial development agency is to be made under the  
29 provisions of subsection (a), the following shall apply: that,  
30 in critical economic areas A, B or C where an average of 4% or

1 more of the labor force has been unemployed for the preceding  
2 calendar year, the Authority may contract to loan the industrial  
3 development agency an amount not in excess of 40% of the cost of  
4 an industrial development project wherein the responsible buyer  
5 or tenant is a small business and where an average of 6% or more  
6 of the labor force has been unemployed for the preceding  
7 calendar year, the Authority may contract to loan the industrial  
8 development agency an amount not in excess of 50% of the cost of  
9 an industrial development project wherein the responsible buyer  
10 or tenant is a small business and in such latter instance the  
11 industrial development agency project percentage shall be  
12 removed.]

13 Moneys so loaned by the Authority to industrial development  
14 agencies shall be withdrawn from the Industrial Development Fund  
15 or other account of the Authority and paid over to the  
16 industrial development agency in such manner as shall be  
17 provided and prescribed by the rules and regulations of the  
18 Authority.

19 [All payments of interest on said loans and the principal  
20 thereof shall be deposited by the Authority in the Industrial  
21 Development Fund.]

22 Loans by the Authority to an industrial development agency  
23 for an industrial development project shall be made only in the  
24 manner and to the extent as in this section six provided,  
25 except, however, in those instances wherein an agency of the  
26 Federal government participates in the financing of an  
27 industrial development project by loan, grant or otherwise of  
28 Federal funds. When any Federal agency does so participate the  
29 Authority may adjust the required ratios of financial  
30 participation by the industrial development agency, the source

1 of independent funds, and the Authority in such manner as to  
2 insure the maximum benefit available to the industrial  
3 development agency, the Authority, or both, by the participation  
4 of the Federal agency.

5 Where any Federal agency participating in the financing of an  
6 industrial development project is not permitted to take as  
7 security for such participation a mortgage the lien of which is  
8 junior to the mortgage of the Authority, the Authority shall in  
9 such instances be authorized to take as security for its loan to  
10 the industrial development agency a mortgage junior in lien to  
11 that of the Federal agency.

12 Before any loan is approved by the Authority, the responsible  
13 tenant or purchaser must certify to the Authority that it has  
14 not been cited by a governmental agency for causing pollution in  
15 the Commonwealth, or if it has been so cited, that it is  
16 embarked on a specific program for eliminating the cause of the  
17 citation. The responsible tenant or purchaser must also certify  
18 to the Authority that the proposed project would be designed so  
19 as not to cause pollution in violation of existing standards.

20 In the event of the imposition of any civil or criminal  
21 penalty on a specific industrial development project hereinafter  
22 approved, resulting from the violation of any law or regulation  
23 relating to environmental pollution in the Commonwealth, the  
24 responsible tenant or purchaser shall, at the request of the  
25 Authority, be required to either show evidence of having entered  
26 into an agreement with the appropriate governmental agency  
27 providing for the required abatement, or if the violation has  
28 been appealed to the courts, evidence of having complied with a  
29 finally adjudicated decision of a court of law relating to the  
30 violation. If the responsible tenant or purchaser shall fail to

1 show such evidence, the Pennsylvania Industrial Development  
2 Authority together with the Environmental Quality Board of the  
3 Department of Environmental Resources may at their discretion  
4 take such action as they deem appropriate with regard to the  
5 project loan.

6 Section 5. The act is amended by adding sections to read:

7 Section 7.1. Employment Projection Audits.--The Authority  
8 shall implement a procedure to determine whether the employment  
9 projections set out in the loan application under section 7 are  
10 achieved.

11 Section 13.1. Annual Report.--Prior to July 1 of each year,  
12 the Authority shall provide a report on its operation for the  
13 previous calendar year to the House Business and Commerce  
14 Committee and the Senate Community and Economic Development  
15 Committee. Such report may be a separate report or part of any  
16 other report prepared by the Authority or the Department of  
17 Commerce provided that any such report include the steps taken  
18 by the Authority to comply with the recommendations set forth in  
19 the Fiscal Report of the House Business and Commerce Committee  
20 on the Sunset Evaluation and Review of the Pennsylvania  
21 Industrial Development Authority (September 28, 1987).

22 Section 13.2. Regulations.--By June 30, 1988, the Authority  
23 shall promulgate regulations necessary to effectuate the  
24 purposes of the act, including, if necessary and where  
25 appropriate, flexible provisions concerning changes in items  
26 subject to frequent variance including, but not limited to,  
27 interest rates or other economic development factors.

28 Section 6. The act of July 6, 1961 (P.L.509, No.262), known  
29 as the Pennsylvania Redevelopment Area Economic Cooperation and  
30 Implementation Act, is repealed.



1       Section 7. This act, with respect to The Pennsylvania  
2 Industrial Development Authority, shall constitute the  
3 legislation required to reestablish the authority under the act  
4 of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

5       Section 8. This act shall take effect immediately.