
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 783 Session of
1993

INTRODUCED BY HALUSKA, DALEY, TIGUE, VAN HORNE, WOZNIAK,
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MELIO, MARCH 22, 1993

REFERRED TO COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT,
MARCH 22, 1993

AN ACT

1 Establishing the Product Development Corporation; providing for
2 corporate powers, financial aid agreements and bonds;
3 establishing the Product Development Corporation Fund;
4 providing for an annual report and tax exemption; and making
5 an appropriation.

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

8 Section 1. Short title.

9 This act shall be known and may be cited as the Product
10 Development Corporation Act.

11 Section 2. Definitions.

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

15 "Board." Board of directors established under section 3.

16 "Corporation." Product Development Corporation.

17 "Fund." The Product Development Corporation Fund.

18 Section 3. Product Development Corporation.

1 (a) Establishment of corporation.--There is hereby
2 established a body corporate to be known as the Product
3 Development Corporation. The corporation shall be a quasi-public
4 instrumentality and the exercise by the corporation of the
5 powers conferred shall be deemed to be the performance of a
6 public function.

7 (b) Board of directors.--The corporation shall be governed
8 by a board of seven directors to be appointed by the Governor,
9 at least five of whom shall be knowledgeable and have skill,
10 knowledge and experience in the areas of the development of
11 technological invention.

12 (c) Terms.--The term of each director shall be coterminous
13 with the term of the Governor or until a successor is chosen,
14 whichever is later. A director shall be eligible for
15 reappointment. The Governor shall fill any vacancy for the
16 unexpired term.

17 (d) Election of officers.--The directors shall annually
18 elect one of their members as chairman and one as secretary. The
19 board may elect other officers from among the members as it
20 deems proper.

21 (e) Compensation.--Members shall receive no compensation for
22 the performance of their duties but shall be reimbursed for
23 necessary expenses.

24 Section 4. Powers of corporation vested in board.

25 The powers of the corporation shall be vested in and
26 exercised by the board of directors. Four members of the board
27 shall constitute a quorum and the affirmative vote of a majority
28 of the members present at a meeting of the board shall be
29 necessary for any action taken by the board. No vacancy in the
30 membership of the board shall impair the right of a quorum to

1 exercise all the rights and perform all the duties of the board.
2 The board may delegate to one or more of its members or its
3 officers, agents and employees those powers and duties as it may
4 deem proper.

5 Section 5. President.

6 The board shall appoint a president of the corporation who is
7 not a member of the board to serve at the pleasure of the board
8 and receive compensation as shall be determined by the board.

9 The president shall be the chief administrative officer of the
10 corporation and shall direct and supervise administrative
11 affairs and general management of the corporation. The president
12 may employ other employees as shall be designated by the board
13 of directors and shall attend all meetings of the board, keep a
14 record of all proceedings and be custodian of all records.

15 Section 6. Corporate purpose and powers.

16 The purpose of the corporation shall be to stimulate and
17 encourage the development of new products by the infusion of
18 financial aid for invention and innovative situations in which
19 financial aid would not otherwise be reasonably available from
20 commercial sources, and for this purpose the corporation shall
21 have the following powers:

22 (1) To have perpetual succession as a body corporate and
23 to adopt bylaws, policies and procedures for the regulation
24 of its affairs.

25 (2) To enter into venture agreements for the advancement
26 of financial aid to persons doing business in this
27 Commonwealth involving the development and production of
28 specific products, procedures and techniques in this
29 Commonwealth and to condition the agreements upon contractual
30 assurances that the benefits of increasing or maintaining

1 employment and tax revenues shall remain in this Commonwealth
2 and shall accrue to it for a sufficient time period to
3 justify the Commonwealth's involvement.

4 (3) To receive and accept loans, aid or contributions
5 from any source of money, property, labor or other things of
6 value, subject to the conditions upon which the grants and
7 contributions may be made, including, but not limited to,
8 gifts or grants from any department or agency of the United
9 States or this Commonwealth.

10 (4) To acquire, lease, purchase, manage, hold and convey
11 real and personal property in this Commonwealth and lease,
12 convey or enter into contracts with respect to property on
13 any terms necessary or incidental to the carrying out of
14 these purposes.

15 (5) To borrow money.

16 (6) To hold patents, copyrights, trademarks or any other
17 evidences of protection or exclusivity as to any product
18 issued by the United States, any other nation or any state.

19 (7) To employ personnel and engage consultants,
20 attorneys and appraisers.

21 (8) With the approval of the State Treasurer, to invest
22 any funds not needed for immediate use or disbursement,
23 including any funds held in reserve.

24 (9) To do anything necessary or convenient to the
25 issuance of bonds, but the corporation shall have no power at
26 any time to pledge the credit or taxing power of the
27 Commonwealth or any of its municipalities or political
28 subdivisions, nor shall any of its obligations be deemed to
29 be obligations of the Commonwealth or any of its political
30 subdivisions.

1 (10) To the extent permitted under its contracts with
2 other persons, to consent to any termination, modification,
3 forgiveness or other change of any term of any contractual
4 right, payment, royalty, contract or agreement of any kind to
5 which the corporation is a party.

6 (11) To make grants or loans to business development
7 credit corporations for purposes of providing venture
8 capital.

9 (12) To do all acts necessary or convenient to carry out
10 the provisions of this act and protect the interest of the
11 corporation and the Commonwealth.

12 Section 7. Financial aid agreements.

13 (a) Amount of financial aid.--The corporation may provide
14 financial aid to cover up to 60% of an applicant's cost in
15 developing a new product.

16 (b) Terms of agreement.--The financial aid agreement shall
17 contain the following provisions:

18 (1) The aid shall be recovered by the corporation by the
19 applicant paying to the corporation a royalty on the sale of
20 the product for which the aid was made available as follows:

21 (i) The royalty rate shall be 5% of all sales of the
22 product for a period of not less than five years
23 commencing on the date the project begins.

24 (ii) If at the conclusion of the five-year period,
25 the corporation has been paid an amount equal to or
26 greater than two and one-half times the amount of aid
27 which it provided to the applicant, the royalty rate
28 shall be reduced to a rate of 1% of sales for a
29 subsequent five-year period.

30 (iii) If at the conclusion of the five-year period,

1 the corporation has not been paid an amount equal to or
2 greater than two and one-half times the amount of aid
3 which it provided to the applicant but at the conclusion
4 of an additional two-year period, the corporation has
5 been paid an amount equal to or greater than three and
6 one-half times the amount of the aid, the royalty rate
7 shall be reduced to a rate of .75% which shall be payable
8 for an additional seven-year period.

9 (iv) If neither of the conditions of subparagraph
10 (ii) or (iii) are met, the royalty rate of 5% shall be
11 paid to the corporation until the corporation recovers
12 five times the amount of aid which it provided to the
13 applicant and upon the corporation recovering five times
14 the amount of the aid, the royalty rate shall be reduced
15 to .5% and shall be payable to the corporation for an
16 additional period of time equal to the number of years it
17 took the corporation to recover five times the aid.

18 (2) Upon the applicant's meeting any of the conditions
19 of subparagraph (i) and either subparagraph (ii), (iii) or
20 (iv), no additional royalty shall be paid to the corporation.

21 (c) Alternative terms.--The financial aid agreement may
22 contain alternative terms in lieu of any of the requirements of
23 subsection (b), including, but not limited to, making loans,
24 arrangements or acquisitions of equity positions by the
25 corporation, provided the alternative terms will result in an
26 agreement which, in the opinion of the board of directors, will
27 produce substantially similar results to the agreement required
28 under subsection (b).

29 Section 8. Applications for financial aid.

30 All applications for financial aid shall be forwarded,

1 together with an application fee prescribed by the corporation,
2 to the president of the corporation. The president, after
3 preparing necessary records for the corporation, shall forward
4 each application to the staff of the corporation for an
5 investigation and report concerning the advisability of
6 approving the proposed financial aid for the company and any
7 other factors deemed relevant by the corporation. The
8 application may also be referred to any local industrial
9 development authority, community development corporation or
10 other similar organization willing to accept the responsibility
11 for the investigation and report. The investigation and report
12 shall include, but shall not be limited to, facts about the
13 company under consideration such as its history, wage standards,
14 job opportunities, stability of employment, the extent of its
15 dependency on defense contracts, past and present financial
16 condition and structure, pro forma income statements, present
17 and future markets and prospects, and integrity of management.
18 The feasibility of the proposed product and invention to be
19 granted financial aid, including the state of development of the
20 product as well as the likelihood of its commercial feasibility
21 shall also be included in the report. After receipt and
22 consideration of the report and after any other action as is
23 deemed appropriate, the board shall determine whether the
24 purposes of this act will be accomplished by providing the
25 financial aid which is requested by the applicant. When the
26 board determines in favor of an applicant it may grant financial
27 assistance in the manner and to the extent authorized by this
28 act. The applicant shall be promptly notified of its action by
29 the corporation.

30 Section 9. Bonds.

1 (a) Repayment.--The principal, interest and other charges
2 payable on any bonds of the corporation shall be payable solely
3 and exclusively from:

4 (1) the income and revenues from mortgages the
5 corporation owns and holds on industrial development
6 projects; or

7 (2) its revenue generally.

8 (b) Authorization.--The bonds of the corporation shall be
9 authorized by resolution of the board. The resolution may
10 provide:

11 (1) The series of the bonds.

12 (2) The date or dates the bonds bear.

13 (3) The date the bonds mature, not to exceed 20 years
14 from their respective date.

15 (4) The interest rate the bonds bear which shall be
16 payable at least semiannually.

17 (5) The denomination of the bonds.

18 (6) The form of the bonds which shall be either coupon
19 or fully registered with coupons.

20 (7) The registration the bonds carry.

21 (8) Exchangability or interchangability privileges of
22 the bonds.

23 (9) Medium and place of payment of the bonds.

24 (10) The terms of redemption, with or without premium,
25 of the bonds.

26 (11) Entitlement to those priorities in the revenues or
27 receipts of the corporation. The bonds shall be signed by or
28 shall bear the facsimile signature of those officers as the
29 corporation shall determine, and coupon bonds shall have
30 attached thereto interest coupons bearing the facsimile

signature of the treasurer of the corporation, all as may be prescribed in the resolution or resolutions. The bonds may be issued and delivered, notwithstanding that one or more of the officers signing the bonds, or the treasurer whose facsimile signature shall be upon the coupon, shall have ceased to be holding office at the time when the bonds shall actually be delivered. The bonds may be sold at public or private sale for that price or those prices as the corporation shall determine. Pending the preparation of the definitive bonds, interim receipts may be issued to the purchaser or purchasers of the bonds and may contain the terms and conditions as the corporation may determine. Any bond reciting in substance that it has been issued by the corporation to aid in the product development projects to accomplish the public purposes of this act shall be conclusively deemed, in proceedings involving the validity or enforceability of the bond or security therefor, to have been issued for that purpose.

(c) Resolutions.--Any resolution or resolutions authorizing any bonds may contain provisions which shall be part of the contract with the holders thereof, as to:

(1) Pledging the full faith and credit of the corporation, but not of the Commonwealth or any political subdivision thereof, for those obligations or restricting the same to all or any of the revenues or receipts of the corporation.

(2) The terms and provisions of the bonds.

(3) Limitations on the purposes to which the proceeds of the bonds then or thereafter to be issued may be applied.

(4) The setting aside of reserves or sinking funds and

1 the regulation and disposition thereof.

2 (5) Limitations on the issuance of additional bonds.

3 (6) The terms and provisions of any indenture under
4 which the same may be issued.

5 (7) Any other or additional agreements with the holders
6 of the bonds.

7 (d) Agreement with banks or trust companies.--The
8 corporation may enter into any indentures or other agreements
9 with any bank or trust company, including any Federal agency,
10 and may assign and pledge all or any of the revenues or receipts
11 of the corporation. The indenture or other agreement may contain
12 those provisions as may be customary in the instruments or as
13 the corporation may authorize, including, without limitation,
14 provisions as to:

15 (1) The application of funds and the safeguarding of
16 funds on hand or on deposit.

17 (2) The rights and remedies of the trustee and the
18 holders of the bonds which may include restrictions upon the
19 individual right of action of the bondholders.

20 (3) The terms and provisions of the bonds or the
21 resolutions authorizing the issuance of the same.

22 (e) Negotiable instruments.--The bonds shall have all the
23 qualities of negotiable instruments under 13 Pa.C.S. (relating
24 to commercial code).

25 (f) Rights and remedies.--The rights and remedies under this
26 section conferred upon or granted to the bondholders shall be in
27 addition to and not in limitation of any rights and remedies
28 lawfully granted to the bondholders by the resolution or
29 resolutions providing for the issuance of bonds or by any
30 indenture or other agreement under which the same may be issued.

1 If the corporation defaults in the payment of principal of or
2 interest on any of the bonds after the principal or interest
3 becomes due, whether at maturity or upon call for redemption,
4 and the default continues for a period of 30 days, or if the
5 corporation fails or refuses to comply with the provisions of
6 this act or defaults in any agreement made with the holders of
7 the bonds, the holders of 25% in aggregate principal amount of
8 the bonds then outstanding, by instrument or instruments filed
9 in the Office of the Recorder of Deeds of Dauphin County and
10 proved or acknowledged in the same manner as a deed to be
11 recorded, may appoint a trustee to represent the bondholders for
12 the purpose provided under this section. The trustee and any
13 trustee under any indenture or other agreement may, and, upon
14 written request of the holder of 25% or any other percentage as
15 may be specified in an indenture or other agreement in principal
16 amount of the bonds then outstanding, shall, in his or its own
17 name:

18 (1) By mandamus or other suit, action or proceeding at
19 law or in equity, enforce all rights of the bondholders,
20 including the right to require the corporation to carry out
21 any agreement as to or pledge of the revenues or receipts of
22 the corporation and to require the corporation to carry out
23 any other agreements with or for the benefit of the
24 bondholders and to perform its and their duties under this
25 act.

26 (2) Bring suit upon the bonds.

27 (3) By action or suit in equity, require the corporation
28 to account as if it were the trustee of an express trust for
29 the bondholders.

30 (4) By action or suit in equity, enjoin any acts or

1 things which may be unlawful or in violation of the rights of
2 the bondholders.

3 (5) By notice in writing to the corporation, declare all
4 bonds due and payable and if all defaults shall be made good,
5 then with the consent of the holders of 25%, or any other
6 percentage as may be specified in any indenture or other
7 agreement, of the principal amount of the bonds then
8 outstanding, annul the declaration and its consequences.

9 (g) Jurisdiction of court.--The Commonwealth Court shall
10 have jurisdiction of any suit, action or proceedings by the
11 trustee on behalf of the bondholders. Any trustee appointed by
12 the court or a trustee acting under an indenture or other
13 agreement, and whether or not all bonds have been declared due
14 and payable, shall be entitled as of right to the appointment of
15 a receiver. The receiver may exercise dominion over the assets
16 of the corporation or any part thereof, the revenues or receipts
17 from which are or may be applicable to the payment of the bonds
18 so in default and he may collect and receive all revenues
19 arising therefrom in the same manner as the corporation or the
20 board might do. The receiver shall deposit all moneys in a
21 separate account and apply the same in the manner as the court
22 shall direct. In any suit, action or proceeding by a trustee,
23 the fees, counsel fees and expenses of the trustee and of the
24 receiver, if any, and all costs and disbursements allowed by the
25 court shall be a first charge on any revenues and receipts by
26 the corporation, the revenues or receipts from which are or may
27 be applicable to the payment of the bonds so in default. A
28 trustee shall, in addition to the foregoing, have and possess
29 all of the powers necessary or appropriate for the exercise of
30 any functions specifically set forth under this section or in

1 any indenture or other agreement or incident to the general
2 representation of the bondholders in the enforcement and
3 protection of their rights.

4 Section 10. Product Development Corporation Fund.

5 (a) Establishment.--There is hereby established the Product
6 Development Corporation fund as a separate fund in the State
7 Treasury.

8 (b) Source.--All proceeds from the sale of bonds and all
9 income of the corporation shall be paid into the fund and shall
10 be to be used in carrying out the purposes of this act.

11 (c) Administration.--The fund shall be administered by the
12 corporation.

13 Section 11. Annual report.

14 On September 1 of each year, the corporation shall report on
15 its operations for the preceding fiscal year to the Governor.
16 The report shall include a summary of the activities of the
17 corporation and a complete operating and financial statement.
18 The corporation shall be subject to examination by the State
19 Treasurer. The accounts of the corporation shall be subject to
20 annual audits by the Auditor General.

21 Section 12. Tax exemption.

22 The corporation is exempt from all franchise, corporate
23 business and income taxes levied by the Commonwealth. Nothing in
24 this act shall be construed to exempt from any of the taxes, or
25 from any taxes levied in connection with the manufacture or sale
26 of any products which are the subject of any agreement made by
27 the corporation, any person entering into any agreement with the
28 corporation.

29 Section 13. Appropriation.

30 The sum of \$500,000, or as much thereof as may be necessary,

1 is hereby appropriated to the Product Development Corporation
2 Fund for the fiscal year July 1, 1993, to June 30, 1994, to
3 carry out the provisions of this act.

4 Section 14. Effective date.

5 This act shall take effect in 60 days.