

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1322 Session of
2003

INTRODUCED BY WOJNAROSKI, GRUITZA, LaGROTTA, MUNDY, BEBKO-JONES,
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CORRIGAN, FABRIZIO, WHEATLEY, GERGELY, LEVDANSKY, GOODMAN,
LEDERER, COY, BELFANTI, MANN, SHANER, YUDICHAK, PISTELLA AND
DeLUCA, 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

1 financing authority indebtedness and financing and for
2 prohibitions; establishing a Pennsylvania Opportunity Fund
3 Program and the Pennsylvania Opportunity Fund Oversight
4 Committee; providing for reporting; making an appropriation;
5 and making editorial changes.

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

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

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

14 * * *

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

17 * * *

18 "Oversight committee" means the Pennsylvania Opportunity Fund
19 Oversight Committee established in section 15.4.

20 * * *

21 "Secretary" means the Secretary of [Commerce] Community and
22 Economic Development of the Commonwealth.

23 * * *

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

27 Section 6.3. Financing Authority Indebtedness.--(a) The
28 financing authority shall have the power and is hereby
29 authorized to issue its limited obligation revenue bonds and
30 other types of financing as in the judgment of the financing
31 authority shall be necessary to provide sufficient funds for any
32 related or unrelated projects: (i) provided that the issuance by

1 the financing authority of taxable or tax-exempt bonds on behalf
2 of projects comprising industrial facilities, commercial
3 facilities, pollution control facilities, energy conversion
4 facilities, energy producing facilities and disaster relief
5 project facilities, other than projects to be funded by the
6 oversight committee, shall have been authorized by an industrial
7 and commercial development authority or a group of industrial
8 and commercial development authorities or by an industrial
9 development agency or a group of industrial and development
10 agencies; (ii) further provided that the financing authority may
11 issue taxable or tax-exempt bonds on behalf of interagency
12 projects other than projects to be funded by the oversight
13 committee only if the applicant has first applied to the
14 Pennsylvania Infrastructure Investment Authority for financing
15 under the provisions of the act of March 1, 1988 (P.L.82,
16 No.16), known as the "Pennsylvania Infrastructure Investment
17 Authority Act," and the Pennsylvania Infrastructure Investment
18 Authority in writing refers the applicant to the financing
19 authority to finance all or part of the interagency project in
20 accordance with this act; and (iii) further provided that the
21 issuance by the financing authority of taxable or tax-exempt
22 bonds for a public facility other than projects to be funded by
23 the oversight committee, interagency projects and projects for
24 roads and transportation facilities and transportation systems
25 of every kind shall have been authorized by a municipality,
26 municipal authority or Commonwealth agency and only if both the
27 applicant and the financing authority have determined that the
28 cost of obtaining the financing for the public facility will be
29 reduced through the issuance of bonds through the financing
30 authority. For purposes of the determination required in this

1 subsection, any financing for a public facility that the
2 financing authority reasonably believes could have received a
3 rating of "A" or better from either Moody's Investors Service or
4 Standard & Poor's Corporation shall be presumed not to be
5 eligible for financing by the financing authority. The financing
6 authority is authorized and empowered to use the proceeds of any
7 bonds issued for the making of loans, purchasing loans,
8 mortgages, security interests or loan participations and paying
9 all incidental expenses in connection therewith, paying expenses
10 of authorizing and issuing the bonds, paying interest on the
11 bonds until revenues thereof are available in sufficient amounts
12 and funding the reserves as the financing authority deems
13 necessary and desirable.

14 * * *

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

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

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

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

30 (4) [The] Except for projects to be funded by the oversight

1 committee, the project complies with all rules and regulations
2 of the financing authority, if any.

3 (b) In addition to other provisions of this section limiting
4 the power of the financing authority to make loans or provide
5 other financing in respect to a particular project, no funds of
6 the financing authority shall be used in respect of any project
7 if the financing authority would be required to operate, service
8 or maintain the project pursuant to any lease or other agreement
9 except upon foreclosure or except upon the occurrence of a
10 default in the payment or terms of any loan made. Nothing shall
11 prevent the financing authority from transferring such property
12 to the project applicant, project user or either of their
13 designees at the end of the term of such financing.

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

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

1 issued for this project shall be five years.

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

3 Section 15.3. Business in Our Sites Program.--A Pennsylvania
4 Opportunity Fund Program entitled Business in Our Sites is
5 established within the financing authority. The Business in Our
6 Sites Program shall provide loans for the development and
7 preparation of sites for future use by businesses, private
8 developers or others.

9 (1) The oversight committee may establish a loan and grant
10 procedure for the purpose of this program, or it may contribute
11 money to the department for the use by the department under one
12 or more programs administered by the department which are
13 consistent with the purpose of this program.

14 (2) The oversight committee may commit up to three hundred
15 million dollars (\$300,000,000) in first round funds to the grant
16 and loan procedure for this program.

17 (3) Before any project is approved under this program, the
18 oversight committee or the department, as appropriate, shall
19 develop written guidelines.

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

24 (1) The Governor.

25 (2) The State Treasurer.

26 (3) The Secretary of the Budget.

27 (4) The secretary.

28 (5) The Secretary of Banking.

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

1 (i) One member appointed by the President pro tempore of the
2 Senate.

3 (ii) One member appointed by the Minority Leader of the
4 Senate.

5 (iii) One member appointed by the Speaker of the House of
6 Representatives.

7 (iv) One member appointed by the Minority Leader of the
8 House of Representatives.

9 (7) Four members appointed by the Governor.

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

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

13 (2) Two members under subsection (a)(7) shall serve terms of
14 four years from appointment and until a successor is appointed,
15 and two members under subsection (a) shall serve terms of two
16 years from appointment and until a successor is appointed.

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

20 (d) The Governor shall serve as chairperson of the oversight
21 committee, or the Governor may designate another member to serve
22 as chairperson. The members of the oversight committee shall
23 select one member to serve as secretary.

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

29 (f) A majority of the members of the oversight committee
30 then serving shall constitute a quorum of the oversight

committee. Only a member or a designee who is physically present at a meeting or able to participate fully in the deliberations by appropriate telecommunications means shall count toward a quorum of the oversight committee.

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

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

(2) To control and manage, invest and reinvest money received from bond financing, from repayments and redeposits or from any other source derived and dedicated for use in programs financed by the oversight committee under section 15.3 and for all expenses associated with the programs. Funds may be deposited by the oversight committee in banks or trust companies in special accounts for use by the oversight committee as set forth in this clause, including the use of interest earned on the accounts. Money in the accounts shall be paid out on order of the oversight committee. Funds deposited by the oversight committee in special accounts in banks or trust companies may be prudently invested in any of the following:

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

(ii) Certificates of deposit and other evidences of deposit at financial institutions, bankers' acceptances and commercial paper rated in the highest tier, for example, A1, P1, F1 or D1

or higher, by a nationally recognized rating agency.

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

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

(v) Money market funds:

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

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

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

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

(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

1 administer on behalf of the oversight committee.

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

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

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

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

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

22 Section 15.6. Annual Report.--By November 30, 2004, and
23 annually thereafter, the oversight committee shall submit a
24 report to the Governor and to the chair and minority chair of
25 the Appropriations Committee of the Senate and the chair and
26 minority chair of the Appropriations Committee of the House of
27 Representatives. The report shall provide an analysis of the
28 status of the current investments and transactions made by the
29 oversight committee or the department over the previous fiscal
30 year for the program.

1 Section 4. The sum of \$12,000,000, or as much thereof as may
2 be necessary, is hereby appropriated to the Pennsylvania
3 Economic Development Financing Authority for the fiscal year
4 July 1, 2003, to June 30, 2004, and is hereby allocated to the
5 oversight committee to carry out the provisions of this act and
6 any other act of the General Assembly which confers financing
7 authority on the oversight committee.

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