

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2875 Session of
2006

INTRODUCED BY VEON, BLACKWELL, GEORGE, HARHAI, JOSEPHS, KOTIK,
LEACH, LEDERER, McCALL, PARKER, PRESTON, SIPTROTH, WALKO,
WHEATLEY, SOLOBAY, WANSACZ, YUDICHAK, STABACK AND
CALTAGIRONE, JULY 1, 2006

REFERRED TO COMMITTEE ON COMMERCE, JULY 1, 2006

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," amending and adding definitions;
28 providing for the Pennsylvania Capital Access Program
29 (PennCAP) within the Pennsylvania Economic Development
30 Financing Authority; and making editorial changes.

31 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. The title of the act of August 23, 1967 (P.L.251,
3 No.102), known as the Economic Development Financing Law,
4 amended December 19, 1975 (P.L.576, No.165), is amended to read:

5 AN ACT

6 Providing for the incorporation as public instrumentalities of
7 the Commonwealth and as bodies corporate and politic of
8 industrial and commercial development authorities for
9 municipalities, counties and townships; prescribing the
10 rights, powers and duties of such authorities hereafter
11 incorporated; authorizing such authorities to acquire, by
12 gift or purchase, to construct, improve and maintain
13 industrial, specialized, or commercial development projects
14 including projects for the elimination or prevention of
15 blight and the control of air and water pollution, and to
16 borrow money and issue bonds therefor; providing for the
17 payment of such bonds and giving security therefor, and
18 prescribing the rights of the holders of such bonds;
19 authorizing the lease or sale of industrial, specialized, or
20 commercial development projects to industrial, specialized,
21 or commercial enterprises; authorizing any county,
22 municipality or township to transfer or convey to such
23 authorities, any facilities or property available for
24 industrial, specialized, or commercial development projects;
25 exempting the property and securities of such authorities
26 from taxation; authorizing such authorities to enter into
27 contracts with and to accept grants from the Federal
28 Government or any agency thereof; and providing for approval
29 by the Secretary of [Commerce] Community and Economic
30 Development of the proceedings relating to industrial,

1 specialized, or commercial development projects of such
2 authorities.

3 Section 2. The definitions of "cost of the project" or
4 "cost," "department" and "secretary" in section 3 of the act,
5 amended December 17, 1993 (P.L.490, No.74), are amended and the
6 section is amended by adding definitions to read:

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

8 * * *

9 "Amount" or "proceeds" when used in connection with a loan or
10 loans, means only the amount covered under the loan agreement.

11 * * *

12 "Borrower" means the recipient of a loan which has been or
13 will be filed by the participating bank for enrollment under
14 Pennsylvania Capital Access Program.

15 * * *

16 "Cost of the project" or "cost" means and includes any and
17 all costs of a project, including, but not limited to, any and
18 all costs and expenses of acquisition of all land, interests in
19 land, property, rights, buildings, structures, equipment,
20 furnishings and other tangible or intangible property comprising
21 the project, the expense of demolishing, removing or relocating
22 any buildings or structures on lands acquired or to be acquired
23 and the expense of acquiring any lands to which such buildings
24 or structures may be moved or relocated, financing charges and
25 other costs of financing and issuing bonds, interest expenses
26 prior to and during construction and for a period of twelve
27 months thereafter, costs of engineering, financial, accounting
28 and legal services, plans, specifications, studies, surveys
29 necessary or incidental to determining the feasibility or
30 practicability of constructing the project, administrative

1 expenses, reserves for interest and such other expenses as may
2 be necessary or incidental to the development, implementation or
3 use of the project and the placing of the same in operation. In
4 addition, "cost of the project" or "cost" may include working
5 capital or other capital needs related to industrial, commercial
6 or other economic activities or operating costs of public
7 facilities, provided, however, that working capital, operating
8 costs and other capital needs shall be limited as a percentage
9 of the cost of the project financed with the proceeds of bonds
10 issued under this act by regulations, statements of policy,
11 guidelines or rulings issued by the Department of [Commerce]
12 Community and Economic Development.

13 "Department" means the Department of [Commerce] Community and
14 Economic Development of the Commonwealth.

15 * * *

16 "Enrolled loan" means a loan enrolled by the Department of
17 Community and Economic Development under the terms of section
18 15.3.

19 * * *

20 "Insider transaction" means a loan to an executive officer,
21 director or principal shareholder of a participating bank, a
22 member of the immediate family of the executive officer,
23 director or principal shareholder or to an entity controlled by
24 any of these individuals.

25 * * *

26 "Participating bank" means a lending institution within this
27 Commonwealth which is enrolled with the Department of Community
28 and Economic Development in the Pennsylvania Capital Access
29 Program.

30 "Passive real estate ownership" means ownership of real

1 estate for the purpose of deriving income from speculation,
2 trade or rentals, except that the term does not include:

3 (1) the ownership of that portion of real estate being
4 used or intended to be used for the operation of the business
5 of the owner of the real estate; or

6 (2) the ownership of real estate for the purpose of
7 construction or renovation.

8 "PennCAP" means the Pennsylvania Capital Access Program
9 established in section 15.3.

10 * * *

11 "Secretary" means the Secretary of [Commerce] Community and
12 Economic Development of the Commonwealth.

13 * * *

14 Section 3. Sections 6.1(b) and 6.3(d) of the act, amended
15 December 17, 1993 (P.L.490, No.74), are amended to read:

16 Section 6.1. Pennsylvania Economic Development Financing
17 Authority; Board of Directors.--* * *

18 (b) The financing authority shall be governed and all of its
19 corporate powers exercised by a board of directors which shall
20 be composed of the following individuals:

21 (1) [Seven] Eight members to be appointed by the Governor,
22 with the advice and consent of the Senate, who shall represent
23 the general public and the public interest. The members
24 initially appointed shall serve for terms of two, three and four
25 years, respectively, from the date of their appointment and
26 until their respective successors shall be duly appointed and
27 qualified, the term of each appointed member to be designated by
28 the Governor at the time of his appointment. Initially, three
29 members shall be appointed for terms of four years; two members
30 shall be appointed for terms of three years; and two members

1 shall be appointed for terms of two years. The terms of all of
2 their successors shall be four years each, except that any
3 person appointed to fill a vacancy shall serve only for the
4 unexpired term, and any appointed member shall be eligible for
5 reappointment.

6 (2) The Secretary of [Commerce] Community and Economic
7 Development, or its successor agency, who will serve as
8 chairman, or his designee.

9 (3) The Secretary of Labor and Industry or his designee.

10 [(4) The Secretary of Community Affairs or his designee.]

11 (5) The Secretary of Agriculture or his designee.

12 (6) The Secretary of Banking or his designee.

13 (7) One member to be appointed by the Majority Leader of the
14 Senate, one member to be appointed by the Minority Leader of the
15 Senate, one member to be appointed by the Majority Leader of the
16 House of Representatives and one member to be appointed by the
17 Minority Leader of the House of Representatives. All members
18 shall serve at the pleasure of the appointing authority.

19 * * *

20 Section 6.3. Financing Authority Indebtedness.--* * *

21 (d) If the bonds issued by the financing authority are tax-
22 exempt bonds for which Federal law requires an allocation, the
23 [Department of Commerce] department shall issue an allocation
24 charging such small issue project's pro rata share of the issue
25 to the county in which said project is to be located provided
26 that the project requires a type of allocation distributed by
27 the department to the counties.

28 * * *

29 Section 4. Section 10 of the act, amended July 16, 1975
30 (P.L.60, No.36), is amended to read:

1 Section 10. Moneys of The Authority.--All moneys of any
2 authority, from whatever source derived, shall be paid to the
3 treasurer of the authority. Said moneys shall be deposited in
4 banks, bank and trust companies or under savings contracts in
5 savings associations, in one or more special accounts. Such
6 special accounts to the extent the same is not insured shall be
7 continuously secured by a pledge of direct obligations of the
8 United States of America, of the Commonwealth or as otherwise
9 provided by law having an aggregate market value, exclusive of
10 accrued interest, at all times at least equal to the balance on
11 deposit in such account. Such securities shall either be
12 deposited with the treasurer, or be held by a trustee or agent
13 satisfactory to the authority. All banks, bank and trust
14 companies and savings associations are authorized to give such
15 security for such deposits. The moneys in said accounts shall be
16 paid out on the warrant or other order of the chairman of the
17 authority, or of such other person or persons as the authority
18 may authorize to execute such warrants or orders. Every
19 authority shall file an annual report with the [Department of
20 Commerce] department and with the municipality creating the
21 authority on forms prepared and distributed by the [Department
22 of Commerce] department, which shall make provision for the
23 accounting of revenues and expenses. Every authority shall have
24 its books, accounts and records audited annually in accordance
25 with generally accepted auditing standards by an independent
26 auditor who shall be a certified public accountant or competent
27 public accountant and a copy of his audit report shall be
28 attached to and be made a part of the aforesaid annual report. A
29 concise financial statement shall be published annually, at
30 least once in a newspaper of general circulation in the

1 municipality where the principal office of the authority is
2 located. If such publication is not made by the authority, the
3 municipality shall publish such statement at the expense of the
4 authority. If the authority fails to make such an audit, then
5 the controller, auditors or accountant designated by the
6 municipality, are hereby authorized and empowered from time to
7 time to examine at the expense of the authority the accounts and
8 books of the authority, including its receipts, disbursements,
9 contracts, leases, sinking funds, investments, and any other
10 matters relating to its finances, operations and affairs.

11 The Auditor General of the Commonwealth of Pennsylvania shall
12 have the right to examine the books, accounts and records of any
13 authority.

14 Section 5. The act is amended by adding a section to read:

15 Section 15.3. PennCAP.--(a) The Pennsylvania Capital Access
16 Program (PennCAP) is established as a small business loan
17 guarantee program within the financing authority. The purpose of
18 PennCAP is to:

19 (1) Assist small businesses in meeting their financial
20 obligations and responsibilities by providing greater access to
21 capital through private lending institutions.

22 (2) Encourage investment and reinvestment by small
23 businesses in economic opportunities that will provide jobs,
24 stimulate economic growth and encourage more export trade.

25 (3) Encourage lending institutions to make lending capital
26 available to small businesses by minimizing the potential risks
27 associated with business loans.

28 (b) The financing authority shall have the power and duty
29 to:

30 (1) Administer PennCAP.

1 (2) Inspect, as the financing authority may determine
2 necessary, the files of a participating bank relating to any
3 loans enrolled under PennCAP during the normal business hours of
4 the bank.

5 (3) Market PennCAP to businesses and lending institutions
6 within this Commonwealth.

7 (c) Any business with capital needs is eligible for PennCAP,
8 subject to the following:

9 (1) The proceeds of the loan must be used for a business
10 purpose within this Commonwealth.

11 (2) The proceeds of the loan must be applied toward the
12 costs of the project.

13 (3) A borrower must apply for a loan guarantee under PennCAP
14 directly through a participating bank.

15 (4) To receive a PennCAP loan guarantee through a
16 participating bank, a branch of the participating bank must be
17 located in the borrower's local area.

18 (5) A borrower must negotiate loan terms, conditions and use
19 of proceeds not governed by this act directly with the
20 participating bank.

21 (6) The maximum amount of a PennCAP enrolled loan is twelve
22 million five hundred thousand dollars (\$12,500,000).

23 (7) Insider transactions are prohibited.

24 (8) The proceeds of a loan may not be used for the
25 following:

26 (i) Passive real estate ownership.

27 (ii) Manufacture, distribution or sale of products or
28 services intended by the borrower to be used in illegal or
29 illicit activities.

30 (iii) Operations which derive more than forty percent of its

gross revenues from the manufacture, distribution or sale of alcoholic beverages.

(iv) Operations by any person which derive more than twenty-five percent of its gross revenues from services incident to termination of pregnancy.

(v) Operations primarily established for the manufacture, distribution or sale of sexually oriented materials, products or services.

(vi) Operations of primarily religious oriented services or activities.

(vii) Operations of private clubs.

(viii) Operations of sky boxes or other private luxury boxes.

(ix) Operations of gambling facilities.

(x) Operations of racetracks.

(xi) Operations of hot tub facilities or massage parlors.

(9) In the case of a loan to refinance a loan previously made to the borrower by the participating bank that was not enrolled under PennCAP, the participating bank may obtain coverage under PennCAP for an amount not exceeding the amount of additional financing.

(d) A prospective borrower shall submit a written application to the department in a form and manner as prescribed by the department.

(e) The department shall promulgate regulations to prescribe the manner in which PennCAP shall operate.

Section 6. This act shall take effect in 60 days.