

COMMERCE AND TRADE (12 PA.C.S.) - INFRASTRUCTURE AND FACILITIES
IMPROVEMENT PROGRAM

Act of Apr. 1, 2004, P.L. 200, No. 23

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No. 2004-23

SB 10

AN ACT

Amending Title 12 (Commerce and Trade) of the Pennsylvania Consolidated Statutes, providing for the Infrastructure and Facilities Improvement Program; and making a related repeal.

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

Section 1. Title 12 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 34

INFRASTRUCTURE AND FACILITIES IMPROVEMENT PROGRAM

Sec.

3401. Scope of chapter.

3402. Definitions.

3403. Establishment.

3404. Application.

3405. Review.

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§ 3401. Scope of chapter.

This chapter relates to the Infrastructure and Facilities Improvement Program.

§ 3402. Definitions.

The following words and phrases when used in this chapter shall have the meaning given to them in this section unless the context clearly indicates otherwise:

"Applicant." An issuing authority which applies for financial assistance under section 3404 (relating to application).

"Convention center." Interests in land, improvement, structure, buildings or part of a building, whether owned by, leased by or to or otherwise acquired by an authority, which are appropriate for large public assemblies, the holding of conventions, conferences, trade exhibitions and other business, social, cultural, scientific and public interest events.

"Convention center authority." An entity created under any of the following:

(1) Article XXV-A of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

(2) Article XXIII(n) and (o) of the act of August 9, 1955 (P.L.323, No.130), known as The County Code.

(3) 53 Pa.C.S. Ch. 56 (relating to municipal authorities) or the former act of May 2, 1945 (P.L.382, No. 164), known as the Municipality Authorities Act of 1945, for purposes related to convention centers.

(4) 64 Pa.C.S. Ch. 60 (relating to Pennsylvania Convention Center authority).

"Cost of a project." Any of the following expenses incurred for a project:

(1) Expenses for the acquisition, construction, reconstruction, expansion, extension, demolition,

improvement, rehabilitation or remodeling of interests in land, buildings, structures, improvements or infrastructure, which are part of the project.

(2) Expenses for the remediation of existing environmental hazards on land where the project is or will be located.

(3) Financing charges and other costs and expenses incurred in financing and issuing bonds for the project.

(4) Costs and expenses of administrative expenses and professional services, including the costs of engineering, financial services, accounting and legal services, rendered in completing the project.

(5) Costs and expenses associated with the preparation of plans, specifications, studies and surveys, necessary or incidental to determining the feasibility or practicability of constructing the project.

"Department." The Department of Community and Economic Development of the Commonwealth.

"Hospital." A facility operated by an entity licensed as a hospital under the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, or the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, which is used to provide inpatient care and services.

"Hotel establishment." A hotel which is associated with a convention center.

"Industrial enterprise." An enterprise, other than a mercantile, commercial or retail enterprise, which by virtue of its size requires substantial capital and will create significant employment opportunities.

"Infrastructure." Any of the following:

(1) Drainage and storm water systems.

(2) Energy facilities which distribute electric power.

(3) Wastewater systems.

(4) Transportation facilities. The term includes roads, parking facilities, sidewalks, bridges, rails, ports, waterways and airports.

(5) Pipelines for transporting natural gas.

(6) Facilities for the transmission of information. The term includes telecommunication and cable.

(7) Water supply facilities.

(8) Interests in land to construct a facility, pipeline or system listed in paragraphs (1) through (7).

(9) Engineering, design and inspection costs associated with the construction of a facility, pipeline or system listed in paragraphs (1) through (7).

"Issuing authority." Any of the following:

(1) An authority created under the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law.

(2) An authority created under Article XXV-A of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

(3) Article XXIII(n) and (o) of the act of August 9, 1955 (P.L.323, No.130), known as The County Code.

(4) The Pennsylvania Economic Development Financing Authority or an authority established under section 4 of the act of August 23, 1967 (P.L.251, No.102), known as the Economic Development Financing Law.

(5) An issuing authority as defined in section 3 of the act of July 11, 1990 (P.L.465, No.113), known as the Tax Increment Financing Act.

(6) An authority created under 53 Pa.C.S. Ch. 56 (relating to municipal authorities) or the former act of May

2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, for purposes related to convention centers.

(7) An authority created and continued under 64 Pa.C.S. Ch. 60 (relating to Pennsylvania Convention Center Authority).

"Manufacturer." An entity which is engaged in the giving of new shapes, new qualities or new combinations to matter by the application of skill and labor.

"Project." As follows:

(1) If the project user is an industrial enterprise or retail enterprise:

(i) Infrastructure.

(ii) Remediation of environmental hazards which were not caused or contributed to by the applicant or the project user.

(2) If the project user is a manufacturer, hospital, convention center or hotel establishment:

(i) Infrastructure.

(ii) Remediation of environmental hazards which were not caused or contributed to by the applicant or the project user.

(iii) Interests in land, buildings, structure or improvements required by the project user.

"Project user." An industrial enterprise, retail enterprise, manufacturer, hospital, convention center or hotel establishment, which owns, leases or uses all or any part of a project.

"Retail enterprise." An entity engaged in retail sales which created or will create at least 200 full-time jobs and occupies or will occupy at least a 200,000-square-foot facility.

"Secretary." The Secretary of Community and Economic Development of the Commonwealth.

"Year." The fiscal year of the Commonwealth.

§ 3403. Establishment.

There is established within the department a program to be known as the Infrastructure and Facilities Improvement Program. The program shall enhance the economic development of the Commonwealth by providing financial assistance in the form of multiyear grants to issuing authorities toward payment of debt service on projects.

§ 3404. Application.

An issuing authority may submit an application to the department requesting financial assistance for a project. The application must be on a form required by the department and must include all of the following:

(1) The name and address of the applicant.

(2) The name, address and state tax identification numbers of the project user.

(3) A description of the project. The description shall include all of the following:

(i) A detailed narrative describing the project and the project user.

(ii) A detailed statement of the cost of the project. The statement must include the amount and type of debt to be issued by the applicant for the project, the identity of the party responsible for repayment of the debt and the collateral or security to be provided.

(iii) A statement of the number of net new full-time jobs to be created by the project and the number of existing full-time jobs to be preserved by the project.

(4) A statement of the amount of grant funds being requested per year.

(5) A statement of the number of years a grant is being requested. If the applicant is requesting a grant for a project of a project user that is an industrial enterprise, retail enterprise or a manufacturer, the request may not exceed ten years. If the applicant is requesting a grant for a project of a project user that is a hospital, convention center or hotel establishment, the request may not exceed 20 years.

(6) Financial information from the project user prepared or reported on by an independent certified public accountant projecting for the next three years all of the following:

(i) The sales or expected sales tax collected or to be collected by the project user from activities as a result of the project.

(ii) The expected hotel occupancy tax to be collected by the project user from activities as a result of the project.

(iii) The expected net increase in personal income tax withheld by the project user as an employer pursuant to Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, from activities as a result of the project.

(7) Evidence of a firm commitment from the project user to use the project upon completion.

(8) If the project is solely for infrastructure, a statement that a portion of the project is being funded under the act of July 11, 1990 (P.L. 465, No. 113), known as the Tax Increment Financing Act.

(9) Any other information required by the department.
Section 3405. Review.

(a) Project review.--Upon receiving a completed application, the department shall review the application to determine all of the following:

(1) That the cost of the project is reasonable.

(2) The number of net new full-time jobs created or to be created by the project and the number of existing full-time jobs to be preserved by the project.

(3) That a firm commitment from the project user to use the project upon completion exists.

(4) That the financing for the project identifies a party other than the Commonwealth that will be responsible for repayment of the debt.

(5) That the applicant submitted satisfactory financial information from the project user prepared or reported on by an independent certified public accountant.

(6) That the financing for the project does not pledge the full faith and credit of the Commonwealth.

(7) If the project is solely for infrastructure, that a portion of the project is being funded under the Tax Increment Financing Act.

(8) If the project was completed prior to the effective date of this section, that the project user is a retail enterprise.

(9) That the applicant and the project user complied with all other criteria established by the department.

(b) Financial review.--

(1) Upon being satisfied that all requirements have been met, the department shall forward the application to the Office of the Budget and the Department of Revenue. The office, in conjunction with the Department of Revenue, shall

review the application. Notwithstanding the provisions of section 353(f) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, the Department of Revenue may supply the department and the office with information concerning taxes owed or paid by a project user or for which a project user may otherwise be liable or with any other aspect of an applicant's tax liability. The office, in conjunction with the Department of Revenue, shall evaluate all of the following:

(i) The sales tax collected or expected to be collected by the project user pursuant to Article II of the Tax Reform Code of 1971 from activities as a result of the project.

(ii) The hotel occupancy tax to be collected by the project user pursuant to Article II of the Tax Reform Code of 1971 from activities as a result of the project.

(iii) The expected net increase in personal income tax withheld by the project user as an employer pursuant to Article III of the Tax Reform Code of 1971 from activities as a result of the project.

(2) The Office of the Budget may accept, reject or adjust the estimate of the amount of tax remitted or to be remitted to the Commonwealth by the project user from activities resulting from the project.

§ 3406. Approval.

(a) Financial approval.--Upon being satisfied that all requirements have been met, the Secretary of the Budget shall establish a maximum annual amount for the grant and shall notify the department and the Department of Revenue. The annual amount established shall be based upon the review made in section 3405(b) (relating to review) and the annual debt service of the project.

(b) Grant approval.--Upon receipt of the notification required in subsection (a), the department may approve the application and award the applicant a grant in an annual amount not to exceed the amount established by the Secretary of the Budget. Prior to providing grant funds to the applicant, the department shall enter into a contract with the applicant and the project user. The contract shall include provisions which do all of the following:

(1) Specify the amount of the grant per year for the first three years.

(2) Specify the total number of years that grant funds may be provided to the applicant. If the applicant is an industrial enterprise, retail enterprise or a manufacturer, the number of years may not exceed ten years. If the applicant is a hospital, convention center or hotel establishment, the number of years may not exceed 20 years.

(3) If the grant will be awarded for more than three years, establish the procedure for the award of a grant after year three. To provide a grant beyond the initial three-year period, the applicant shall be required to demonstrate to the satisfaction of the department, the Secretary of the Budget and the Department of Revenue all of the following:

(i) That the tax revenues specified in section 3405 during the first or second year generated an amount equal to or exceeding the amount of the grant awarded for that year.

(ii) That the tax revenues specified in section 3405(a) during the third year are anticipated to be equal to or exceed the amount of the grant to be awarded during the third year.

(iii) That the tax revenues specified in section 3405(a) during the succeeding two-year period are anticipated to be equal to or exceed the amount of the grant to be awarded during that same period. Grants must be verified prior to any subsequent request being granted.

(iv) That the amount of the annual grant requested in year four and thereafter will not exceed the amount of the annual debt service owed on the project.

(4) Require the applicant to use the grant to pay debt service for the project and to repay all or any portion of a grant if the applicant fails to use the grant to pay debt service.

(5) Specify that the annual amount of the grant in any one year may not exceed the annual amount of the debt service on the project for that year.

(6) If the grant in any one year exceeds the annual payment on debt service in that year, require the applicant to repay the amount of the grant for that year which exceeds the payment on debt service for that year.

(7) If the project user is not a governmental entity, prohibit the project user from holding title to the project during the period which the applicant is receiving a grant from the department.

(8) Require the project user to pay to the applicant a sum equal to any payments received by the project user from third parties for infrastructure which is part of the project during the period which the applicant is receiving a grant from the department. Any payment received by the applicant under this paragraph must be applied to payment of the debt service for the project.

(9) Require the applicant to insure that the full amount of annual debt service is paid for the project, regardless of the amount of the grant received.

(10) Require the project user to use the project for the period of time the applicant is receiving grants under this chapter and to repay all or any portion of a grant if the project user fails to use the project for the period of time the applicant is receiving grants.

(11) Require the project user to timely pay all Commonwealth and local taxes and fees.

(12) Require the department to approve any change of use of a project during the period in which the applicant is receiving a grant from the department. The department may not unreasonably withhold its consent to a change of use.

(c) Limitations.--

(1) If sufficient funds are not appropriated to cover the anticipated cost of the grants awarded in any given fiscal year, the department shall prorate payments to issuing authorities.

(2) For grants renewed in accordance with subsection (b)(3), grants may not exceed the incremental growth in revenues realized by the Commonwealth from the tax sources identified in section 3405(b).

(3) Grants may not be used to pay debt service for projects directly related to gaming.

Section 2. All acts or parts of acts are repealed insofar as they are inconsistent with this act.

Section 3. This act shall take effect July 1, 2004, or immediately, whichever is later.

APPROVED--The 1st day of April, A. D. 2004.

EDWARD G. RENDELL