

**COMMERCE AND TRADE (12 PA.C.S.) AND PUBLIC AUTHORITIES AND
QUASI-PUBLIC CORPORATIONS (64 PA.C.S.) - OMNIBUS AMENDMENTS**

Act of Oct. 22, 2014, P.L. 2569, No. 161

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No. 2014-161

HB 1550

AN ACT

Amending Titles 12 (Commerce and Trade) and 64 (Public Authorities and Quasi-Public Corporations) of the Pennsylvania Consolidated Statutes, in economic development financing strategy, further providing for definitions; establishing the Pennsylvania Military Community Enhancement Commission; in small business first, further providing for definitions, for fund and accounts, for department responsibilities, for capital development loans, for EDA loans, for loans in distressed communities, for pollution prevention assistance loans, and for export financing loans; providing for delegation; and further providing for reporting and inspection; in machinery and equipment loans, further providing for definitions, for establishment, for eligibility for loans and terms and conditions, for application and administration, for powers of secretary, for reporting and inspection, for nondiscrimination, for conflict of interest, for reports to General Assembly and for guidelines; providing for the Pennsylvania Industrial Development Program; in Pennsylvania Industrial Development Authority, providing for general provisions, for Pennsylvania Industrial Development Program and transfer of loans; repealing certain provisions of the Pennsylvania Industrial Development Authority Act; and making editorial changes.

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

Section 1. The General Assembly finds and declares as follows:

(1) The successful operation and enhancement of the active, reserve and the National Guard components of our nation's military are essential to the well-being and safety of our nation and to the citizens of this Commonwealth.

(2) The United States military installations, organizations and defense-related regions comprised of military bases and supporting private sector enterprises located in this Commonwealth are of vital importance to the efficient and effective operation of the various branches of the military and are a significant contributor to the Commonwealth's economy.

(3) There is a need to have an integrated approach among Federal, State and local agencies, the general public and private businesses in the economic enhancement and preservation of the military installations and organizations.

(4) The Commonwealth shall promote the health, safety, employment, business opportunities, economic activity and general welfare of our citizens by establishing, within the Department of Community and Economic Development, a commission to carry out these goals.

Section 1.1. Section 302 of Title 12 of the Pennsylvania Consolidated Statutes is amended to read:
§ 302. Definitions.

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

"Economic development program." A program which is administered by the department, including programs administered or staffed by the department, and which provides financial assistance for economic development to persons. The term includes all of the following:

(1) Any program created under Part III (relating to economic development programs).

(2) Any program of an entity created under [Part IV] **64 Pa.C.S. Pt. II** (relating to economic development financing).

(3) The Pennsylvania Industrial Development Authority.

(4) The Pennsylvania Minority Business Development Authority.

(5) The Infrastructure Development Program.

(6) The Industrial Sites Reuse Program.

(7) The tax credit programs established in Articles XVII-B and XVIII-B of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

Section 1.2. Title 12 is amended by adding a chapter to read:

CHAPTER 4

PENNSYLVANIA MILITARY COMMUNITY ENHANCEMENT COMMISSION

Sec.

401. Definitions.

402. Establishment and membership.

403. Powers and duties.

404. Administrative assistance.

405. Report.

§ 401. Definitions.

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

"Commission." The Pennsylvania Military Community Enhancement Commission established under this chapter.

§ 402. Establishment and membership.

(a) Establishment.--The commission is hereby established within the department.

(b) Membership.--The commission shall be comprised of not more than 17 members as follows:

(1) The Lieutenant Governor.

(2) A member appointed by the President pro tempore of the Senate.

(3) A member appointed by the Minority Leader of the Senate.

(4) A member appointed by the Speaker of the House of Representatives.

(5) A member appointed by the Minority Leader of the House of Representatives.

(6) Up to 12 members appointed by the Governor as follows:

(i) One member shall have experience at the senior level of the military, such as an active duty retired three-star or four-star military officer, and shall be familiar with the operations represented by the installations and organizations stationed in this Commonwealth. The member shall serve as chairperson in the absence of the chairperson elected by a majority of the members.

(ii) At least ten members shall be representatives of the military installations or organizations stationed in this Commonwealth and shall have knowledge of the mission and operations of the installation or organization that they represent.

(iii) One member shall be an expert in the field of economic development and shall be knowledgeable in the missions and operations of the military in their respective regions of this Commonwealth.

(c) Chairperson.--A chairperson shall be elected by a majority of the commission members.

(d) Executive director.--The Governor shall appoint an executive director who shall be an employee of the department.

(e) Membership terms.--

(1) Members shall be appointed for a term of two years and serve until their respective successors are appointed. A member may be reappointed for additional terms. Members appointed by the Governor shall serve at the pleasure of the Governor.

(2) If a vacancy occurs on the commission, a successor shall be appointed in the same manner as the predecessor.

(3) A member who is absent from two consecutive meetings of the commission without a reasonable excuse, as determined by the chairperson, shall forfeit membership on the commission.

(4) Members shall not receive compensation for their services, but shall receive reimbursement for their necessary and proper expenses related to their duties on the commission.

§ 403. Powers and duties.

The commission shall have the following powers and duties:

(1) Advise on the expansion of economic development opportunities and defense-related industry organizations in public or private sectors in this Commonwealth.

(2) Establish a viable and long-term relationship with each military installation, organization and defense-related organization in this Commonwealth.

(3) Closely monitor the activities at the Federal level relating to any initiative or proposal that will affect, either positively or negatively, any military installation or organization or defense-related organization in this Commonwealth.

(4) Educate and engage stakeholders at the Federal, State and local levels and in the public and private sectors on the enhancement and preservation of the military installations and organizations and defense-related organizations in this Commonwealth.

(5) Advocate at the Federal, State and local levels for the enhancement of the military installations and organizations and defense-related organizations in this Commonwealth in order to fully support our nation's military at home and abroad.

(6) Identify, in coordination with the department, sources of funding for economic development projects, including projects under this title, 64 Pa.C.S. (relating to public authorities and quasi-public corporations) or projects under the act of February 9, 1999 (P.L.1, No.1), known as the Capital Facilities Debt Enabling Act, related to military installations and defense-related organizations and for the enhancement of military installations or defense-related organizations in this Commonwealth.

(7) Estimate an annual budget for the commission.

§ 404. Administrative assistance.

The department shall provide appropriate administrative, legal and technical support as needed by the commission in order to accomplish its purpose.

§ 405. Report.

The commission shall report its activities no less than quarterly to the Governor or the Governor's designated representative and annually to the General Assembly.

Section 1.3. The definitions of "area loan organization," "community development institution," "distressed community," "EDA loan," "hospitality industry project" and "pollution prevention assistance agency" in section 2302 of Title 12 are amended and the section is amended by adding definitions to read:

§ 2302. Definitions.

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

* * *

"Area loan organization." A local development district, an industrial development agency organized and existing under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act, or any other nonprofit economic development organization certified by the department as possessing the qualifications necessary to evaluate and administer loans made under this chapter.]

"Authority." The Pennsylvania Industrial Development Authority organized and existing under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

"Board." The board of directors of the authority.

* * *

"Certified economic development organization." An entity certified by the authority under 64 Pa.C.S. § 1123 (relating to certification of economic development organizations).

* * *

["Community development institution." Any of the following:

(1) An area loan organization for a distressed community.

(2) A community development financial institution located in a distressed community and approved by the department.]

"Distressed community." A community which has any of the following:

(1) A census tract or other specifically defined geographic area in which there is any of the following:

(i) A median income below 80% of the median income for the United States or this Commonwealth.

(ii) Twenty percent or more of the population is below the poverty level by family size published by the Bureau of the Census.

(iii) An unemployment rate 50% higher than the national average.

(2) An area which is designated a subzone, expansion subzone or improvement subzone under the act of October 6, 1998 (P.L.705, No.92), known as the Keystone Opportunity Zone and Keystone Opportunity Expansion Zone Act.

(3) Any other geographic area designated by the [department] **authority** as distressed. The designation shall be published in the Pennsylvania Bulletin.

"EDA loan." A loan made under this chapter utilizing funds made available to the department **or the authority** under the

Public Works and Economic Development Act of 1965 (Public Law 89-136, 42 U.S.C. § 3121 et seq.).

* * *

"Hospitality industry project." A for-profit project or venture which involves a small business that operates a hotel, motel or other lodging facility and that employs at least five full-time equivalent employees at the time an application is submitted to the [department] **authority** for financing. The term includes a for-profit project or venture which involves a small business that operates a restaurant or food service operation open to the public, that has been in continuous operation for at least five years and that employs at least five full-time equivalent employees at the time an application is submitted.

* * *

["Pollution prevention assistance agency." Any of the following:

(1) An area loan organization.

(2) An industrial resource center created pursuant to the act of June 22, 2001 (P.L.400, No.31), known as the Industrial Resources Center Partnership Act.]

* * *

Section 2. Sections 2303 and 2304(a) (1) and (6), (b) (1) and (5), (c) and (d) of Title 12 are amended to read:

§ 2303. Establishment.

There is established [within the department] a program to be known as the Small Business First Program. The program shall be administered by the [department] **authority** and provide loans to eligible persons for certain projects which encourage job-creating and job-preserving economic development within this Commonwealth.

§ 2304. Fund and accounts.

(a) Fund.--The Small Business First Fund, created under section 1302(a) of the act of June 29, 1996 (P.L.434, No.67), known as the Job Enhancement Act, is continued. The Treasury Department shall credit the following to the fund:

(1) Appropriations made by the General Assembly to the department **or authority** for the program.

* * *

(6) Any other deposits, payments or contributions from any other source made available to the department **or authority** for the program.

(b) Pollution prevention assistance.--The Pollution Prevention Assistance Account, created under the act of June 29, 1996 (P.L.434, No.67), known as the Job Enhancement Act, is continued. The Treasury Department shall credit the following to this account:

(1) Appropriations made by the General Assembly to the department **or authority** for pollution prevention assistance.

* * *

(5) Any other deposits, payments or contributions from any other source made available to the department **or authority** for pollution prevention assistance.

(c) Use of fund.--

(1) Money in the fund may be used as follows:

(i) By the [department] **authority** to make loans in accordance with this chapter and for administrative costs of the [department] **authority** in administering the program.

(ii) By [area loan] **certified economic development** organizations for administrative costs associated with the program which are approved by the [department] **authority**.

(2) Money from the fund derived from appropriations specified for export financing assistance may be deposited by the [department] **authority** in banks or trust companies in special accounts. The special accounts must be continuously secured by a pledge of direct obligations of the United States or of the Commonwealth having an aggregate market value, exclusive of accrued interest, at least equal to the balance on deposit in the account. The securities shall be deposited with the [department] **authority** to be held by a trustee or agent satisfactory to the [department] **authority**. Banks and trust companies are authorized to give security under this paragraph. Money in these special accounts shall be paid out on order of the [department] **authority**.

(d) Use of Pollution Prevention Assistance Account.--Money in the Pollution Prevention Assistance Account may be used by the [department] **authority** to provide loans to small businesses for the adoption or installation of pollution-prevention or energy-efficient equipment or processes in accordance with section 2309 (relating to pollution prevention assistance loans).

Section 3. Section 2305 heading, (a) introductory paragraph, (4) and (5), (b) introductory paragraph, (1) and (3) introductory paragraph of Title 12 are amended, subsection (a) is amended by adding a paragraph and the section is amended by adding a subsection to read:

§ 2305. [Department] **Authority** responsibilities.

(a) General rule.--The [department] **authority** shall do all of the following:

* * *

(4) Approve standards for [area loan] **certified economic development** organization application fees.

[(5) Approve community development financial institutions.]

(6) **Except as provided under section 2306(c)(iii) (relating to capital development loans), determine the job retention or job creation requirements for each project financed in whole or in part through a loan or line of credit made under this chapter.**

(b) Program.--In administering the program, the [department] **authority** may do any of the following:

(1) Provide grants or other financial assistance to [area loan] **certified economic development** organizations for any of the following purposes:

(i) To establish loan reserve funds.

(ii) To reimburse loan losses to commercial banks and other financial institutions as a means of encouraging the expansion and financing of small businesses.

* * *

(3) Utilize the outstanding portfolio of loans **and lines of credit** made under this chapter to raise additional funds by selling, securing, hypothecating or otherwise using such loan proceeds as a financing vehicle if the funds raised are used by the [department] **authority** for either of the following purposes:

* * *

(c) **Additional powers.**--In addition to the powers authorized under this chapter and 64 Pa.C.S. Ch. 11 (relating to Pennsylvania Industrial Development Authority), the board may administer the program by exercising the powers granted to it

under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

Section 4. Sections 2306(a), (b) heading, (1) introductory paragraph and (viii) and (2), (c), (d), (e)(1) and (2)(iii), (f) introductory paragraph and (9), (g)(1) and (2) and (h), 2307, 2308(a), (b) heading, (1) introductory paragraph, (i), (iii) and (v) and (2), (c) heading, (1) introductory paragraph, (2) and (3), (d), (e)(1) and (2), (f), (g)(1) and (2) and (h), 2309(a), (b), (c) heading, (1) introductory paragraph and (i), (2) introductory paragraph and (3), (d), (e)(1), (f), (g)(1) and (2) and (h) and 2310(a), (b) introductory paragraph and (7), (c) introductory paragraph, (d), (e), (f)(1) and (2) and (g) of Title 12 are amended to read:

§ 2306. Capital development loans.

(a) Application.--A small business may submit an application and any applicable application fee to [its area loan] **a certified economic development** organization requesting a loan or line of credit for certain costs of a capital development project under 64 Pa.C.S. § 1121 (relating to common application process). The application shall be on the form required by the [department] **authority** and shall include or demonstrate all of the following, in addition to the contents required under 64 Pa.C.S. § 1121(b):

(1) The name and address of the applicant.

(2) A statement of the **type and** amount of [loan] assistance sought.

(3) A statement of the capital development project, including a detailed statement of the cost of the project.

(4) A financial commitment from a responsible source for any cost of the capital development project in excess of the amount requested.

(5) Any other information required by the [department] **authority**.

(b) [Area loan] **Certified economic development** organization review.--

(1) Upon receipt of a completed application, [an area loan] **a certified economic development** organization shall investigate and determine all of the following:

* * *

(viii) If the applicant complied with all other criteria established by the [department] **authority**.

(2) Upon being satisfied that all requirements have been met, the [area loan] **certified economic development** organizations shall recommend the applicant to the [department] **authority** and forward the application with all supporting documentation to the [department] **authority** for its review and approval.

(c) [Department] **Authority** review.--

(1) Within 30 days of receiving a recommendation and a completed application, the [department] **authority** shall review the application. If the [department] **authority** is satisfied that all requirements have been met, the [department] **authority** may approve the loan request in accordance with the following:

(i) A loan for land, buildings and machinery and equipment may not exceed [\$200,000] **\$400,000** or 50% of the total capital development project costs, whichever is less. For the purposes of this subparagraph, capital development project costs incurred during the 12-month period prior to the date of submission of the application

to the [department] **authority** shall be considered part of the total capital development project costs.

(ii) A loan **or line of credit** for working capital may not exceed \$100,000 [or 50% of the total capital development project costs, whichever is less].

(iii) Except for loans to agricultural producers, a loan must create or preserve one job for every \$25,000 loaned. **The authority may, by submitting notice to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin, periodically update the amount under this subparagraph, based on changes in unemployment statistics, inflation, the authority's cash flow and the need to keep this Commonwealth and the businesses of this Commonwealth competitive.**

(2) The [department] **authority** shall notify the [area loan] **certified economic development** organization and applicant of its decision.

(d) Approvals.--For applications which are approved, the [department] **authority** shall draw an advance equal to the principal amount of the loan from the fund. The advance shall be forwarded to the [area loan] **certified economic development** organization and, upon receipt by the [area loan] **certified economic development** organization, shall become an obligation of the [area loan] **certified economic development** organization. Prior to providing loan funds to the applicant, the [area loan] **certified economic development** organization shall require the applicant to execute a note and to enter into a loan agreement. In addition to the requirements of subsection (e), the loan agreement shall include a provision requiring the recipient to use the loan proceeds to pay the costs of the capital development project. The [department] **authority** may require the [area loan] **certified economic development** organization to impose other terms and conditions on the recipient if the [department] **authority** determines that they are in the best interests of this Commonwealth, including a provision requiring collateral for any penalty imposed under subsection (g).

(e) Loan terms.--A loan agreement entered into in accordance with subsection (c) shall do all of the following:

(1) State the collateral securing the loan. All loans shall be secured by lien positions on collateral at the highest level of priority as may be determined by the [area loan] **certified economic development** organization with the approval of the [department] **authority**.

(2) State the repayment period in accordance with the following:

* * *

(iii) A loan **or line of credit** for working capital shall have a repayment period of up to three years. **A line of credit may be renewed for an additional three-year period at the discretion of the authority.**

* * *

(f) Loan administration.--A loan made under this section shall be administered in accordance with [departmental] **authority** policies and procedures by the [area loan] **certified economic development** organization which made the loan. Each [area loan] **certified economic development** organization shall submit an annual report on the form required by the [department] **authority** and which includes or demonstrates all of the following:

* * *

(9) Any other information or documentation required by the [department] **authority**.

(g) Penalty.--

(1) Except as provided in paragraph (2), the [department] **authority** shall impose a penalty upon a recipient if the recipient fails to create or preserve the number of employment opportunities specified in its approved application.

(2) The [department] **authority** may waive the penalty required by paragraph (1) if the [department] **authority** determines that the failure was due to circumstances outside the control of the recipient.

* * *

(h) Defaults.--The [department] **authority** may by foreclosure take title to a capital development project which it financed if acquisition is necessary to protect a loan made under this section. The [department] **authority** shall pay all costs arising out of the foreclosure and acquisition from moneys held in the fund. The [department] **authority** may, in order to minimize financial losses and sustain employment, lease the capital development project. The [department] **authority** may withdraw moneys from the fund to purchase first mortgages and to make payments on first mortgages on any capital development project which it financed where purchase or payment is necessary to protect a loan made under this section. The [department] **authority** may sell, transfer, convey and assign the first mortgages and shall deposit any moneys derived from the sale of any first mortgages in the fund.

§ 2307. EDA loans.

(a) Application and administration procedures.--The [department] **authority** shall establish application and administration procedures to be used for EDA loans. The procedures shall be established by guidelines and shall conform in all respects to those procedures required or established by the Economic Development Administration for use of Federal funds under the Public Works and Economic Development Act of 1965 (Public Law 89-136, 42 U.S.C. § 3121 et seq.) **and, if applicable, 64 Pa.C.S. § 1121 (relating to common application process)**.

(b) Eligibility for EDA loans.--The [department] **authority** shall establish eligibility requirements to be used for EDA loans. The requirements shall be established by guidelines and shall conform in all respects to those procedures required or established by the Economic Development Administration for use of Federal funds under the Public Works and Economic Development Act of 1965.

§ 2308. Loans in distressed communities.

(a) Application.--A small business located in a distressed community may submit an application and any applicable application fee to a [community development institution] **certified economic development organization** requesting a loan or line of credit for certain costs of a capital development project **under 64 Pa.C.S. § 1121(a) (relating to common application process)**. The application shall be on the form required by the [department] **authority** and shall include or demonstrate all of the following, **in addition to the contents required under 64 Pa.C.S. § 1121(b)**:

(1) The name and address of the applicant.

(2) A statement that the small business is engaged in business-to-public service or in the mercantile, commercial or point-of-sale retail business sectors.

(3) A statement of the **type and** amount of [loan] assistance sought.

(4) A statement of the capital development project, including a detailed statement of the cost of the project.

(5) A financial commitment from a responsible source for the cost of the capital development project in excess of the amount requested.

(6) Any other information required by the [department] **authority**.

(b) [Community development institution] **Certified economic development organization** review.--

(1) Upon receipt of a completed application, a [community development institution] **certified economic development organization** shall investigate and determine all of the following:

(i) If the applicant is a small business which is engaged in business-to-public service or in the mercantile, commercial or point-of-sale retail business sectors in accordance with conditions or criteria established by the [department] **authority**.

* * *

(iii) If the applicant has demonstrated a direct impact on the community in which the capital development project is or will be located, on residents of that community or on the local and/or regional economy. The [department] **authority** shall establish criteria that will assist in making this demonstration.

* * *

(v) If the applicant complied with all other criteria established by the [department] **authority**.

(2) Upon being satisfied that all requirements have been met, the [community development institution] **certified economic development organization** shall recommend the applicant to the [department] **authority** and forward the application with all supporting documentation to the [department] **authority** for its review and approval.

(c) [Department] **Authority** review.--

(1) Upon receipt of a recommendation and a completed application, the [department] **authority** shall investigate and determine all of the following:

* * *

(2) If the [department] **authority** is satisfied that all requirements have been met, the [department] **authority** may approve the loan **or line of credit** request in an amount not to exceed \$200,000 or 50% of the total capital development project costs, whichever is less. For the purpose of this paragraph, capital development project costs, except the costs related to working capital, incurred during the 12-month period prior to the date of submission of the application to the [department] **authority** shall be considered part of the total capital development project costs.

(3) The [department] **authority** shall notify the [community development institution] **certified economic development organization** and applicant of its decision.

(d) Approvals.--For applications which are approved, the [department] **authority** shall draw an advance equal to the principal amount of the loan from the fund and, prior to providing loan funds to the applicant, the [department] **authority** shall require the applicant to execute a note and to enter into a loan agreement. In addition to the requirements of subsection (e), the loan agreement shall include a provision

requiring the recipient to use the loan proceeds to pay the costs of the capital development project. The [department] **authority** may impose other terms and conditions on the recipient if the [department] **authority** determines they are in the best interests of this Commonwealth, including a provision requiring collateral for any penalty imposed under subsection (g).

(e) Loan terms.--A loan agreement entered into in accordance with subsection (d) shall do all of the following:

(1) State any collateral securing the loan. The [department] **authority** may use its best judgment to identify and secure collateral.

(2) State the repayment period which may be flexible[.], **except that a line of credit may not have a term of more than three years. A line of credit may be renewed for an additional three-year period at the discretion of the authority.**

* * *

(f) Loan administration.--A loan made under this section shall be administered in accordance with [departmental] **authority** policies and procedures.

(g) Penalty.--

(1) Except as provided in paragraph (2), the [department] **authority** shall impose a penalty upon a recipient if the recipient fails to preserve the number of employment opportunities specified in its approved application.

(2) The [department] **authority** may waive the penalty required by paragraph (1) if the [department] **authority** determines that the failure was due to circumstances outside the control of the recipient.

* * *

(h) Defaults.--The [department] **authority** may take title by foreclosure to a capital development project which it financed where acquisition is necessary to protect a loan made under this section. The [department] **authority** shall pay all costs arising out of the foreclosure and acquisition from money held in the fund. The [department] **authority** may, in order to minimize financial losses and sustain employment, lease the capital development project. The [department] **authority** may withdraw money from the fund to purchase first mortgages and to make payments on first mortgages on any capital development project which it financed if purchase or payment is necessary to protect a loan made under this section. The [department] **authority** may sell, transfer, convey and assign the first mortgages and shall deposit in the fund money derived from the sale of any first mortgages.

§ 2309. Pollution prevention assistance loans.

(a) Application.--A small business may submit an application and any application fee to a [pollution prevention assistance agency] **certified economic development organization** requesting a loan for a pollution prevention infrastructure **under 64 Pa.C.S. § 1121(a) (relating to common application process)**. The application shall be on the form required by the [department] **authority** and shall include or demonstrate all of the following, **in addition to the contents required under 64 Pa.C.S. § 1121(b)**:

(1) The name and address of the applicant.

(2) A statement of the amount of loan assistance sought.

(3) A statement of the pollution prevention infrastructure, including a detailed statement of the cost of the infrastructure.

(4) A financial commitment from a responsible source for the cost of the pollution prevention infrastructure in excess of the amount requested.

(5) Any other information required by the [department] **authority**.

(b) [Pollution prevention assistance agency] **Certified economic development organization** review.--

(1) Upon receipt of a completed application, a [pollution prevention assistance agency] **certified economic development organization** shall investigate and determine all of the following:

(i) If the applicant is a small business.

(ii) If the project is for pollution prevention infrastructure.

(iii) If the applicant complied with all other criteria established by the [department] **authority**.

(2) Upon being satisfied that all requirements have been met, the [pollution prevention assistance agency] **certified economic development organization** shall recommend the applicant to the department and forward the application with all supporting documentation to the [department] **authority** for its review and approval.

(c) [Department] **Authority** review.--

(1) Upon receipt of a recommendation and a completed application, the [department] **authority** shall investigate and determine all of the following:

(i) If the pollution prevention infrastructure demonstrates a substantial likelihood of preventing or reducing pollution. The Department of Environmental Protection shall assist the [department] **authority** in reviewing the applications and provide technical assistance.

* * *

(2) If the [department] **authority** is satisfied that all requirements have been met, the [department] **authority** may approve the loan request. A loan approved under this subsection may not exceed the lesser of:

* * *

(3) The [department] **authority** shall notify the [pollution prevention assistance agency] **certified economic development organization** and applicant of its decision.

(d) Approvals.--For applications which are approved, the [department] **authority** shall draw an advance equal to the principal amount of the loan from the Pollution Prevention Assistance Account. Prior to providing loan funds to the applicant, the [department] **authority** shall require the applicant to execute a note and to enter into a loan agreement. In addition to the requirements of subsection (e), the loan agreement shall include a provision requiring the recipient to use the loan proceeds to pay the costs of the pollution prevention infrastructure. The [department] **authority** may impose other terms and conditions on the recipient if the [department] **authority** determines they are in the best interests of this Commonwealth, including a provision requiring collateral for any penalty imposed under subsection (g).

(e) Loan terms.--A loan agreement entered into in accordance with subsection (d) shall do all of the following:

(1) State the collateral securing the loan. All loans shall be secured by lien positions on collateral at the highest level of priority as may be determined by the [department] **authority**.

* * *

(f) Loan administration.--A loan made under this section shall be administered in accordance with [departmental] **authority** policies and procedures.

(g) Penalty.--

(1) Except as provided in paragraph (2), the [department] **authority** shall impose a penalty upon a recipient if the recipient fails to carry out the pollution prevention infrastructure project as specified in its approved application.

(2) The [department] **authority** may waive the penalty required by paragraph (1) if the [department] **authority** determines that the failure was due to circumstances outside the control of the recipient.

* * *

(h) Defaults.--The [department] **authority** may take title by foreclosure to a pollution prevention infrastructure which it financed if acquisition is necessary to protect a loan made under this section. The [department] **authority** shall pay all costs arising out of the foreclosure and acquisition from money held in the Pollution Prevention Assistance Account. The [department] **authority** may, in order to minimize financial losses and sustain employment, lease the pollution prevention infrastructure. The [department] **authority** may withdraw money from the Pollution Prevention Assistance Account to purchase first mortgages and to make payments on first mortgages on any pollution prevention infrastructure which it financed if the purchase or payment is necessary to protect a loan made under this section. The [department] **authority** may sell, transfer, convey and assign the first mortgages and shall deposit any money derived from the sale of any first mortgages in the Pollution Prevention Assistance Account.
§ 2310. Export financing loans.

(a) Application.--A person may submit an application and any applicable application fee to [the department or its area loan] **a certified economic development** organization requesting a loan for certain costs of a capital development project which will be used in export activities **under 64 Pa.C.S. § 1121(a) (relating to common application process)**. The application must be on the form required by the [department] **authority** and must include or demonstrate all of the following, **in addition to the contents required under 64 Pa.C.S. § 1121(b)**:

(1) The name and address of the applicant.

(2) A statement of the amount of loan assistance sought.

(3) A statement of the capital development project, including a detailed statement of the cost of the project.

(4) A financial commitment from a responsible source for any cost of the capital development project in excess of the amount requested.

(5) A statement that the loan, if approved, would not supplant funding from private sector sources on commercially reasonable terms.

(6) Any other information required by the [department] **authority**.

(b) Review.--Upon receipt of a completed application, the [department] **authority** shall investigate and determine all of the following:

* * *

(7) If the applicant complied with all other criteria established by the [department] **authority**.

(c) Approvals.--If the [department] **authority** is satisfied that all requirements have been met, the [department] **authority** may approve the loan request. A loan approved under this section may not exceed \$350,000. The [department] **authority** shall notify the applicant and, if applicable, the [area loan] **certified economic development** organization of its decision. The [department] **authority** shall reserve an amount equal to the principal amount of the loan within the fund or the special account authorized by section 2304(c)(2) (relating to fund and accounts). Prior to providing funds to the applicant, the [department] **authority** shall require the applicant to execute a note and enter into a loan agreement. In addition to the requirements of subsection (d), the loan agreement shall include a provision requiring the recipient to use the loan proceeds to pay the costs of the capital development project. The [department] **authority** may impose other terms and conditions on the recipient if the [department] **authority** determines they are in the best interests of this Commonwealth, including any of the following:

* * *

(d) Loan terms.--A loan agreement entered into in accordance with subsection (c) shall do all of the following:

(1) State the collateral securing the loan. All loans shall be secured by lien positions on collateral at the highest level of priority as may be determined by the [department] **authority**.

(2) State the repayment period as determined by the [department] **authority**.

(3) State the interest rate as determined by the [department] **authority**.

(e) Loan administration.--A loan made under this section shall be administered in accordance with [departmental] **authority** policies and procedures.

(f) Penalty.--

(1) Except as provided in paragraph (2), the [department] **authority** shall impose a penalty upon a recipient if the recipient fails to carry out the export activities specified in its approved application.

(2) The [department] **authority** may waive the penalty required by paragraph (1) if the [department] **authority** determines that the failure was due to circumstances outside the control of the recipient.

* * *

(g) Defaults.--The [department] **authority** may, by foreclosure, take title to a capital development project which it financed if acquisition is necessary to protect a loan made under this section. The [department] **authority** shall pay all costs arising out of the foreclosure and acquisition from money held in the fund or a special account authorized by section 2304(c)(2). The [department] **authority** may, in order to minimize financial losses and sustain employment, lease the capital development project. The [department] **authority** may withdraw money from the fund or a special account authorized by section 2304(c)(2) to purchase first mortgages and to make payments on first mortgages on any capital development project which it financed if purchase or payment is necessary to protect a loan made under this section. The [department] **authority** may sell, transfer, convey and assign the first mortgages and shall deposit any money derived from the sale of any first mortgages in the fund or a special account authorized by section 2304(c)(2).

Section 5. Title 12 is amended by adding a section to read:
§ 2310.1. Delegation.

For loans authorized under section 2306 (relating to capital development loans), 2307 (relating to EDA loans), 2308 (relating to loans in distressed communities), 2309 (relating to pollution prevention assistance loans) or 2310 (relating to export financing loans), the board may delegate the review and approval of applications totaling less than \$200,000 to the authorized staff of the authority by adopting a resolution authorizing the delegation, subject to any conditions established by the board. The resolution must do all of the following:

(1) Enumerate the qualifications and training required for authority staff to be authorized to review and approve applications.

(2) Set loan guidelines and underwriting standards for the authorized staff to follow during the review and approval of applications.

(3) Require authorized staff to provide a monthly report to the board of all actions to a pending or approved application taken during the reporting period.

Section 6. Section 2311 of Title 12 is amended to read:
§ 2311. Reporting and inspection.

(a) Inspection.--An applicant or a recipient shall, upon request, permit authorized employees of the [department] **authority** or its agent to inspect the plant, books and records of the applicant or recipient.

(b) Updating.--An applicant or a recipient shall provide updated information to the [department] **authority** and its agents if conditions change or to the extent that the information originally given becomes inaccurate or misleading.

(c) Periodic reports.--A recipient shall provide the [department] **authority** and its agents with such periodic financial reports as the [department] **authority** may require until the loan is repaid in full.

(d) Financial and performance audits.--An agent of the [department] **authority** shall annually submit to the [department] **authority**, at the agent's expense, an independent financial audit. If the audit reveals misconduct of a material nature on the part of the agent, the [department] **authority** shall take appropriate action.

Section 7. Section 2902 of Title 12 is amended by adding definitions to read:

§ 2902. Definitions.

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

"Authority." The Pennsylvania Industrial Development Authority organized and existing under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

"Board." The board of directors of the authority.

* * *

"Program." The Machinery and Equipment Loan Program established under section 2903 (relating to establishment).

Section 8. Sections 2903, 2905(a) introductory paragraph and (1)(iv) and (v) and (c), 2906(a), (b), (c) introductory paragraph and (14), (d), (e) and (f), 2907, 2908, 2909, 2910, 2911 and 2912 of Title 12 are amended to read:

§ 2903. Establishment.

There is established [within the department] a program to be known as the Machinery and Equipment Loan Program. The program shall be administered by the [department] **authority** and

provide loans to business enterprises for machinery and equipment.

§ 2905. Eligibility for loans; terms and conditions.

(a) Loans; general rules.--The [secretary] **authority** may make advances from the fund, subject to the terms, conditions and restrictions provided under this chapter, for the purpose of making loans to business enterprises involved in industrial processes, mining, manufacturing, production agriculture, information technology, biotechnology, service as a medical facility or other industrial or technology sectors, as defined by the [department] **authority**, to acquire and install new machinery and equipment or upgrade existing machinery and equipment, including the acquisition, application and utilization of computer hardware and software.

(1) All loans shall be subject to all of the following conditions:

* * *

(iv) Be limited to projects that demonstrate the creation or retention of one job for every \$25,000 received from the fund. This subparagraph does not apply to loans made to business enterprises involved in production agriculture or to loans made to medical facilities. **The authority may, by submitting notice to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin, periodically update the amount under this subparagraph, based on changes in unemployment statistics, inflation, the authority's cash flow and the need to keep this Commonwealth and the businesses of this Commonwealth competitive.**

(v) Have an interest rate which shall be established by the [secretary] **authority**.

* * *

(c) Security.--All loans shall be secured by no less than a second lien position on the equipment purchased and other sufficient collateral as determined by the [secretary] **authority**.

§ 2906. Application and administration.

(a) Procedures.--Application and administration procedures for fund loans shall be established by the [secretary] **authority under 64 Pa.C.S. § 1121 (relating to common application process)**.

(b) Receipt.--The [secretary] **authority** shall receive applications from eligible business enterprises for machinery and equipment loans. Applications shall be made to the [secretary] **authority** in the form and manner as the [department] **authority** may require.

(c) Investigation.--Upon receipt of the application, the [secretary] **authority** shall investigate and review the application and either approve or disapprove the loan application by proper action of the [department] **authority**. The decision of the [secretary] **authority** shall be based, in whole or in part, upon the following criteria:

* * *

(14) Such information and documentation as the [secretary] **authority** shall require.

(d) Notification.--The [secretary] **authority** shall notify the applicant of final approval or disapproval of the loan application within a reasonable period of time following the receipt of the application. In the case of approval of a loan application, the [secretary] **authority** shall arrange to draw the loan amount from the fund and advance the sum to the

recipient. The advance shall be made available in the form of a loan transaction, which loan shall be evidenced by a note executed by the recipient and secured in a manner as the [secretary] **authority** shall require in conformity in all respects to the loan as approved by the [secretary] **authority**.

(e) Policy requirements [and report].--All loans shall be administered and monitored by the [department] **authority** in accordance with the policies and procedures prescribed by the [secretary] **authority**. [On or before September 1 of each year, the secretary shall prepare a report that includes the following:

- (1) Each outstanding loan.
- (2) The date of approval.
- (3) The original principal balance.
- (4) The current principal balance.
- (5) The interest rate.
- (6) The purpose for which the loan was made.
- (7) An enumeration of any problems or issues which have arisen with regard to each loan.
- (8) A statement regarding the progress of the business enterprise in creating and retaining its requisite number of employment opportunities.

(9) Such other information and documentation as the secretary shall require.]

(f) Penalty for noncompliance.--In the event that a loan recipient [shall] **does** not comply with its approved application by failing to create or preserve the number of employment opportunities specified in its approved application, the [secretary] **authority** shall impose a penalty equal to an increase in the interest rate to 2% greater than the current prime interest rate for the remainder of the loan unless the penalty is waived by the [secretary] **authority** because the failure is due to circumstances outside the control of the loan recipient. The penalty shall be payable in installments that the [secretary] **authority** deems appropriate.

§ 2907. Powers of [secretary] **authority**.

The [secretary] **authority** shall have and may exercise all powers and authority necessary to the proper administration and implementation of this chapter and shall have the authority to adopt policies, procedures and guidelines and promulgate rules and regulations necessary to effectuate the provisions of this chapter. **In addition to any powers authorized under this chapter and 64 Pa.C.S. Ch. 11 (relating to Pennsylvania Industrial Development Authority), the board may administer the program by exercising the powers granted to it under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.**

§ 2908. Reporting and inspection.

(a) Inspection.--Each business enterprise which applies for or receives assistance under this chapter, upon reasonable request of the [department] **authority**, shall permit duly authorized employees of the department **or the authority** to inspect the plant, books and records of the business enterprise.

(b) Updating.--Each business enterprise shall update the information given to the [department] **authority** in its application if conditions change or to the extent that the information given originally becomes inaccurate or misleading.

(c) Periodic reports.--Each recipient of assistance under this chapter shall provide the [department] **authority** with periodic financial reports as the [secretary] **authority** may require until such time as the loan is paid off.

[§ 2909. Nondiscrimination.

No loan shall be made to a business enterprise unless the business enterprise certifies to the department, in a form satisfactory to the department, that it shall not discriminate against any employee or any applicant for employment because of race, religion, color, national origin, sex or age. The business enterprise shall also certify to the department that it is not currently under citation for pollution violations and that in the future it will meet all applicable antipollution standards.

§ 2910. Conflict of interest.

No employee of the department shall, either directly or indirectly, be a party to or have any financial interest in any contract or agreement arising pursuant to this chapter.]

§ 2911. Reports to General Assembly.

(a) Annual reports.--On or before September 1 of each year, the [secretary] **authority** shall provide a report to the Secretary of the Senate and to the Chief Clerk of the House of Representatives. The report shall describe all relevant activities of the [department] **authority** pursuant to this chapter and shall include the following:

(1) List of business enterprises receiving loans from the fund and the amounts and terms of this assistance.

(2) Loan amounts repaid. Information under this paragraph may be reported in the aggregate.

(3) Loans outstanding, balances due and any penalties imposed. Information under this paragraph may be reported in the aggregate.

(4) Jobs created by businesses receiving funds in previous years. Information under this paragraph may be reported in the aggregate.

(5) Other relevant information as determined by the [secretary] **authority**.

(b) Availability of departmental reports.--Reports prepared by the secretary under section 2906(e) (relating to application and administration) shall be made available upon request to members of the General Assembly.

§ 2912. Guidelines.

The [department] **authority** shall develop written guidelines for the implementation of this chapter.

Section 8.1. Title 12 is amended by adding a chapter to read:

CHAPTER 30

PENNSYLVANIA INDUSTRIAL DEVELOPMENT PROGRAM

Sec.

3001. Scope of chapter.

3002. Definitions.

3003. Establishment.

3004. Industrial Development Fund (Reserved).

3005. Application.

3006. Loans for industrial development projects.

3007. Loans for industrial parks.

3008. Loans for multiple-tenancy building projects.

3009. Reporting and inspection.

3010. Limitations.

3011. Job creation.

§ 3001. Scope of chapter.

This chapter relates to the Pennsylvania Industrial Development Program.

§ 3002. Definitions.

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

"Agricultural processor." An entity that adds value by subjecting one or more farm commodities to a process of manufacture, development or preparation for sale or a person that converts a farm product into a marketable form.

"Agricultural producer." A person or entity involved in the management and use of an agricultural operation for the production of a farm commodity.

"Agriculture." Any of the following:

(1) The management and use of an agricultural operation for the production of a farm commodity.

(2) The sale of a farm commodity at wholesale.

(3) The sale of a farm commodity at retail by an urban and rural supermarket in an underserved area or farmers' markets.

(4) An energy-related activity impacting production agriculture.

(5) An activity which implements best industry practices related to an agricultural waste product, agriculture by-product or fertilizer.

"Authority." The Pennsylvania Industrial Development Authority organized and existing under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

"Board." The board of directors of the authority.

"Fund." The Industrial Development Fund.

"Industrial development project." A project sponsored by a certified economic development organization involving the acquisition or improvement of real property within this Commonwealth which will be occupied and operated by any of the following:

(1) An industrial enterprise.

(2) A manufacturing enterprise.

(3) A research and development enterprise.

(4) An agricultural producer.

(5) An agricultural processor.

"Industrial enterprise." An enterprise which has created or will create substantial employment opportunities. The term may include a warehouse, distribution and terminal facility and office building utilized as national or regional headquarters or computer or clerical operations centers. The term shall not include a mercantile, commercial or retail enterprise.

"Industrial park project." A project sponsored by a certified economic development organization for the purpose of creating sites for the establishment of two or more industrial development projects.

"Manufacturing enterprise." An enterprise which is engaged in the giving of a new shape, new quality or new combination to matter by the application of skill and labor.

"Multiple-tenancy building project." A project sponsored by a certified economic development organization involving the acquisition or construction of land, site, structure or facility for occupancy by two or more industrial enterprises, manufacturing enterprises, research and development enterprises, agricultural producers or agricultural processors.

"Program." The Pennsylvania Industrial Development Program established under section 3003 (relating to establishment).

"Research and development enterprise." An enterprise for the discovery of new and the refinement of known substances, processes, products, theories and ideas. The term does not

include an enterprise activity directed primarily to the accumulation or analysis of commercial, financial or mercantile data.

§ 3003. Establishment.

There is established within the authority a program to be known as the Pennsylvania Industrial Development Program. The program shall be administered by the authority to provide loans for industrial development projects, industrial parks and multiple-tenancy building projects, to increase employment levels and to improve the overall economic health of this Commonwealth.

§ 3004. Industrial Development Fund (Reserved).

§ 3005. Application.

A certified economic development organization may submit an application for assistance under this chapter and under 64 Pa.C.S. § 1121(a) (relating to common application process). The application shall be on the form required by the authority and shall include or demonstrate all of the following, in addition to the contents required under 64 Pa.C.S. § 1121(b):

(1) A general description of the type, classes and number of employees employed or to be employed in the operation of the project.

(2) The cost or estimate of the cost of establishing the project. As used in this paragraph, the term "cost" shall include financing charges, including interest incurred before and during construction but shall not include the cost of any machinery, equipment or fixtures necessary for the project or the installation or maintenance of any of the machinery, equipment or fixtures.

(3) Financial statements of the applicant, proposed guarantors and any other party whose credit is significant to the approval of the financial assistance. By guideline, the authority may specify the period to be covered by the financial statements and whether they must be compiled, reviewed or prepared by a certified public accountant.

(4) Evidence of the arrangement made by the borrower for the financing of all costs of the project exceeding the amount to be financed by the authority.

(5) Evidence that the establishment of the project will not cause the removal of an industrial enterprise, manufacturing enterprise, research and development enterprise, agricultural producer or agricultural processor from one area of this Commonwealth to another area of this Commonwealth, as determined by the authority.

(6) Evidence that the proposed project location has undergone an environmental assessment.

(7) Any other information required by the authority.

§ 3006. Loans for industrial development projects.

The authority may contract to loan an amount not to exceed 50% of the cost of establishing an industrial development project, subject to the following conditions:

(1) Before making the loan, the authority shall determine that:

(i) the borrower is responsible to assume all obligations imposed by the authority in connection with the project, financial or otherwise, and to undertake the operation of the project; and

(ii) the borrower has obtained from other independent and responsible sources a firm commitment for any funds which, in addition to the loan and any other property or assets held by the borrower, are

necessary for the completion and operation of the project.

(2) The authority shall determine the interest rate and repayment period of the loan.

(3) The loan must be evidenced by note of the borrower, and secured by a mortgage on the project for which the loan was made, subordinate only to the mortgage securing the first lien obligation issued to secure the commitment of funds provided to pay the cost of the project from the independent and responsible sources, and used in the financing of the project.

(4) The authority may require additional security as it may deem necessary.

§ 3007. Loans for industrial parks.

The authority may contract to loan an amount not to exceed 75% of the cost of establishing an industrial park project, subject to the following conditions:

(1) The authority shall determine the interest rate and repayment period of the loan.

(2) The loan must be evidenced by note of the borrower and secured by a first mortgage on the industrial park or by participation in a first mortgage. If a Federal agency participates in the financing of the industrial park, the authority may take as security for its loan a mortgage on the industrial park which is second only to the mortgage given to the Federal agency.

(3) If the loan is secured by participation in a first mortgage on the industrial park, a portion of the loan, not to exceed 10% of the cost of the project, may be secured by a second mortgage on the industrial park which is second only to the participating first mortgage.

§ 3008. Loans for multiple-tenancy building projects.

The authority may contract to loan an amount not to exceed 50% of the cost of establishing a multiple-tenancy building project, subject to the following conditions:

(1) The authority shall determine the interest rate and repayment period of the loan.

(2) The loan must be evidenced by note of the borrower and secured by a first mortgage or participation in a first mortgage on the multiple-tenancy building project.

(3) The authority may contract to loan an amount not to exceed 50% of the cost of the project if the loan is secured by a first mortgage or participation in a first mortgage on the project. If the loan is not secured by a first mortgage or participation in a first mortgage on the project, the authority may contract to loan an amount not to exceed 40% of the cost of the project.

(4) If the loan is secured by a participation in a first mortgage on the project, the authority may permit a portion of its loan, not to exceed 10% of the cost of the project, to be secured by a second mortgage on the project which is second only to the participating first mortgage.

§ 3009. Reporting and inspection.

(a) Inspection.--An applicant or a recipient shall, upon request, permit authorized employees of the authority or its agent to inspect the plant, books and records of the applicant or recipient.

(b) Updating.--An applicant or a recipient shall provide updated information to the authority and its agents if conditions change or to the extent that the information originally given becomes inaccurate or misleading.

(c) Periodic reports.--A recipient shall provide the authority and its agents with periodic financial reports as the authority may require until the loan is repaid in full.

(d) Financial and performance audits.--A recipient shall annually submit to the authority, at the recipient's expense, an independent financial audit. If the audit reveals misconduct of a material nature on the part of the recipient, the authority shall take appropriate action.

§ 3010. Limitations.

A loan may not be recommended or approved if the proceeds of the loan could do any of the following:

(1) Cause, aid or assist directly in the relocation of any business operations from one part of this Commonwealth to another unless there is at least a 25% net increase in employment.

(2) Refinance any portion of the total cost of an industrial development project, industrial park or multiple-tenancy building project or other existing loans or debt.

(3) Finance an industrial development project, industrial park or multiple-tenancy building project located outside the geographic boundaries of this Commonwealth.

(4) Provide funds, directly or indirectly, for payment distribution or as loan owners, partners or shareholders of a small business, except as ordinary compensation for services rendered.

(5) Provide funds for speculation in real or personal property, whether tangible or intangible.

§ 3011. Job creation.

The authority shall establish minimum levels of job creation for loans under this chapter, or a requirement that one new job be created for a certain amount of funds loaned. In establishing the minimum levels of job creation, the authority shall consider unemployment statistics, inflation, the authority's cash flow and the need to keep this Commonwealth and the businesses of this Commonwealth competitive. Notice of job creation requirements must be submitted to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

Section 8.2. Title 12 is amended by adding a part heading immediately preceding Chapter 51 to read:

**PART IV
COMMERCIAL PROTECTION**

Chapter

51. Fraudulent Transfers

53. Trade Secrets

Section 8.3. The heading of Part IV of Title 12 is repealed:

[PART IV
ECONOMIC DEVELOPMENT AND FINANCING (Reserved)]

Section 9. The heading of Chapter 11 of Title 64 is amended to read:

CHAPTER 11
PENNSYLVANIA INDUSTRIAL DEVELOPMENT AUTHORITY
[(Reserved)]

Section 9.1. Chapter 11 of Title 64 is amended by adding subchapters to read:

**SUBCHAPTER A
GENERAL PROVISIONS**

Sec.

1101. Scope of chapter.

1102. Definitions.

§ 1101. Scope of chapter.

This chapter relates to the Pennsylvania Industrial Development Authority.

§ 1102. Definitions.

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

"Application." A request for financial assistance from the programs.

"Authority." The Pennsylvania Industrial Development Authority organized and existing under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

"Board." The board of directors of the authority.

"Certified economic development organization." An entity certified by the authority under section 1123 (relating to certification of economic development organizations).

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

"Industrial Development Fund." The fund established under section 8 of the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

"Machinery and Equipment Loan Fund." The fund established under 12 Pa.C.S. § 2904 (relating to Machinery and Equipment Loan Fund).

"Machinery and Equipment Loan Program." The program authorized by 12 Pa.C.S. Ch. 29 (relating to machinery and equipment loans).

"Pennsylvania Industrial Development Program." The program authorized under 12 Pa.C.S. Ch. 30 (relating to Pennsylvania Industrial Development Program).

"Pollution Prevention Assistance Account." The account continued under 12 Pa.C.S. § 2304 (relating to fund and accounts).

"Programs." Any of the following:

- (1) The Small Business First Program.
- (2) The Machinery and Equipment Loan Program.
- (3) The Pennsylvania Industrial Development Program.
- (4) All programs authorized by the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

"Small Business First Fund." The fund continued under 12 Pa.C.S. § 2304 (relating to fund and accounts).

"Small Business First Program." The program authorized by 12 Pa.C.S. Ch. 23 (relating to small business first).

SUBCHAPTER B
STRUCTURES AND POWERS
(Reserved)

SUBCHAPTER C
PROGRAM MANAGEMENT

Sec.

1120. Program management.

1121. Common application process.

1122. Regulations.

1123. Certification of economic development organizations.

1124. Transfer of funds.

1125. Conflict of interest.

§ 1120. Program management.

The authority shall operate the programs in a coordinated and integrated manner, utilizing to the maximum extent possible the same criteria and standards in defining and administering the projects to be funded under the programs.

§ 1121. Common application process.

(a) Preparation.--An application for assistance under the programs must be prepared and approved by a certified economic development organization before it is submitted to the authority, and the application shall comply with any additional requirements of the programs.

(b) Contents.--The application, which shall be in the form required by the authority, shall include the following information, where applicable:

- (1) The applicant's name.
 - (2) The applicant's address.
 - (3) A description of the type and amount of financial assistance requested.
 - (4) A description of the applicant's business or, if the applicant is not the borrower, the borrower's business, including all of the following:
 - (i) The type of business conducted.
 - (ii) The location of the business.
 - (iii) The date the business was established.
 - (iv) The address of the business, including the address of all offices of the business located in this Commonwealth.
 - (v) The name and address of each principal.
 - (vi) The number of current employees and an estimate of future employees.
 - (5) A description of the project, including all of the following:
 - (i) The location of the project.
 - (ii) The total estimated cost of the project, as calculated by an engineer or other qualified professional.
 - (iii) An identification of all sources of capital for the project.
 - (iv) A legal description of all real property held or to be acquired for the establishment of the project.
 - (v) A general description and statement of value of any real or personal property of the applicant and, if applicable, the buyer or tenant of the project, to be applied to the establishment of the project.
 - (6) A statement that the project is consistent with any existing comprehensive county plan where the project is located.
 - (7) A firm commitment from the intended project user to use the project upon completion.
 - (8) A brief description of the anticipated economic impact to this Commonwealth and the host municipality and county as a result of the project.
 - (9) Any plans or other documents as may be required to show the type, structure and general character of the project.
 - (10) A statement that the applicant certifies to the authority that it will not discriminate against any employee or any applicant for employment because of race, religion, color, national origin, sex or age.
 - (11) A statement that the applicant certifies to the authority that it is not currently under citation for pollution violations and that in the future it will meet all applicable antipollution standards.
 - (12) Any information required by the program under which financial assistance may be provided.
 - (13) Any other information required by the authority.
- (c) Review and approval.--

(1) In reviewing the application, the authority shall consider the following, where applicable:

(i) Whether the value of the proposed collateral and the financial resources offered by the applicant are sufficient to repay the loan.

(ii) Whether the project will enable future employment opportunities in or have a net positive economic impact on the surrounding community.

(iii) Whether the statement of the estimated cost of the project is reasonable.

(iv) Whether the sources of financial commitments for funds in excess of the amount requested under this subchapter are reliable.

(v) Whether the applicant has complied with terms required by the programs and under this subchapter.

(vi) Whether the applicant has a history of investment in Pennsylvania-related companies.

(vii) Whether the applicant has demonstrated strong relationships with organizations in this Commonwealth which foster economic development.

(viii) Whether the applicant has a strong performance record.

(ix) Whether the applicant has demonstrated an ability to meet and satisfy debt service, if applicable, as it becomes due and payable.

(x) Whether the applicant has any outstanding environmental violations.

(xi) Any other information deemed to be relevant by the authority.

(2) Subject to any applicable limitations under this subchapter, the amount, duration, interest rate, security required and any other terms of the loan shall be determined at the discretion of the authority based upon its determination of the potential financial risk to the Commonwealth.

(3) Financial assistance may not be approved if the proceeds would be used to:

(i) refinance any portion of the total cost of a capital development project, pollution prevention infrastructure or other existing loans or debt;

(ii) finance a project located outside the geographic boundaries of this Commonwealth;

(iii) relocate a business to another part of this Commonwealth, unless approved in advance by the authority which shall consider the negative economic impact on the community that the business is leaving; or

(iv) provide funds, directly or indirectly, for payment distribution or as a loan to owners, partners or shareholders of a small business, except as ordinary compensation for services rendered.

(4) (i) The terms of all agreements for financial assistance awarded under this subchapter shall include any material terms, requirements or other conditions provided for agreements entered into under this subchapter. The authority may impose other terms and conditions if it determines that they are in the best interests of the Commonwealth, including a provision requiring collateral for any penalty which may be imposed.

(ii) Upon approving an application for a loan under the programs, the authority shall draw an advance equal to the principal amount of the loan from the appropriate

account and, before disbursing loan funds to the applicant, require the applicant to execute a note and to enter into a loan agreement and any other agreement as the authority may require.

(d) Review and notice.--Upon reviewing the application, the authority shall notify the applicant and the certified economic development organization of its decision or request additional information or certifications before making its decision.

(e) Reporting and inspection.--An applicant or a recipient of financial assistance under the programs shall:

(1) permit the authority to inspect its premises, books and records;

(2) provide updated information to the authority if conditions change to the extent that the information originally given becomes inaccurate or misleading; and

(3) provide the authority with any periodic financial reports and audits that the authority may require.

(f) Employment projection audits.--The authority shall implement a procedure to determine whether the employment projections described in the application are achieved.

(g) Transition.--The board shall have all power and authority necessary to implement a transition and continuation of consideration of pending applications and any other pending administrative actions under section 6 of the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act, that are submitted to the authority for consideration prior to the effective date of this section.

§ 1122. Regulations.

The board shall promulgate regulations necessary to administer the programs.

§ 1123. Certification of economic development organizations.

(a) General rule.--The authority shall establish guidelines for the certification of eligible nonprofit organizations as certified economic development organizations.

(b) Eligible applicants.--The following nonprofit organizations may apply to be certified as a certified economic development organization:

(1) A local development district organized and existing under the act of December 7, 1994 (P.L.845, No.120), known as the Local Development District Act.

(2) An industrial development agency organized and existing under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

(3) An industrial resource center organized and existing under the act of June 22, 2001 (P.L.400, No.31), known as the Industrial Resources Center Partnership Act.

(4) A redevelopment authority organized and existing under the act of May 24, 1945 (P.L.982, No.383), known as the Redevelopment Cooperation Law.

(5) A Community Development Financial Institution certified by the Community Development Financial Institution Fund established in section 104(a)(1) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103-325, 12 U.S.C. § 4703(a)(1)).

(6) Any other nonprofit economic development organization determined by the authority as possessing the qualifications necessary to evaluate and administer the programs.

(c) Requirements.--The guidelines must, at minimum, set requirements for annual training and professional development

for an organization's professional staff, standards for the organization's facilities and technical capabilities and require the organization to adopt a code of ethics.

(d) Audit.--A certified economic development organization must submit an audit to the authority every three years demonstrating that requirements continue to be satisfied.

(e) Approval.--If the authority determines that the application meets the requirements of the guidelines, the authority may, in its sole and final discretion, certify the applicant as a certified economic development organization.
§ 1124. Transfer of funds.

Except for funds in the Pollution Prevention Assistance Account, funds may be transferred by an action of the board between the Small Business First Fund, the Machinery and Equipment Loan Fund and the Industrial Development Fund to maximize the effectiveness of the programs.
§ 1125. Conflict of interest.

A member of the board or an employee of the authority may not, either directly or indirectly, be a party to or have any financial interest in any contract or agreement arising pursuant to this chapter or the programs.

SUBCHAPTER D TRANSFER OF LOANS

Sec.

1130. Transfer of loans from certain programs.

§ 1130. Transfer of loans from certain programs.

(a) Loan transfer.--On the effective date of this section, outstanding loans executed under the Small Business First Program and the Machinery and Equipment Loan Program and approved loan commitments that have not been executed by the effective date of this section, including necessary documentation and collateral security associated with the loans, shall be transferred from the department to the authority.

(b) Loan commitments.--An approved loan commitment transferred under subsection (a) shall be executed in accordance with 12 Pa.C.S. Chs. 23 (relating to small business first) and 29 (relating to machinery and equipment loans).

(c) Legal actions.--On the effective date of this section, each legal action relating to a loan under the Small Business First Program or the Machinery and Equipment Loan Program shall be transferred to the authority.

(d) Security or collateral.--No money deposited or to be deposited into the Small Business First Fund or the Machinery and Equipment Loan Fund may serve as security or collateral for any debt incurred by the board before the effective date of this section, unless proceeds made available by the debt are used by the board to fund loans or other financial assistance under the Small Business First Program or the Machinery and Equipment Loan Program to effectively carry out the purposes of the programs.

Section 10. Repeals are as follows:

(1) The General Assembly declares that the repeals under paragraph (2) are necessary to effectuate the addition of 12 Pa.C.S. Ch. 30.

(2) The following provisions of the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act, are repealed:

(i) The definition of "critical economic area" in section 3.

(ii) Section 6.

(iii) Section 7.

(iv) Section 7.1.

Section 11. The addition of 12 Pa.C.S. Ch. 30 is a continuation of sections 6, 7 and 7.1 of the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act. Except as otherwise provided in 12 Pa.C.S. Ch. 30, all activities initiated under sections 6, 7 and 7.1 of the Pennsylvania Industrial Development Authority Act shall continue and remain in full force and effect and may be completed under 12 Pa.C.S. Ch. 30. Orders, regulations, rules and decisions which were made under sections 6, 7 and 7.1 of the Pennsylvania Industrial Development Authority Act and which are in effect on the effective date of section 10(2)(ii), (iii) and (iv) of this act shall remain in full force and effect until revoked, vacated or modified under 12 Pa.C.S. Ch. 30. Contracts, obligations and collective bargaining agreements entered into under sections 6, 7 and 7.1 of the Pennsylvania Industrial Development Authority Act are not affected nor impaired by the repeal of sections 6, 7 and 7.1 of the Pennsylvania Industrial Development Authority Act.

Section 12. This act shall take effect as follows:

- (1) The following shall take effect in 60 days:
 - (i) The amendment of 12 Pa.C.S. § 302.
 - (ii) The addition of 12 Pa.C.S. Ch. 4.
 - (iii) The addition of Part IV heading immediately preceding Chapter 51 of Title 12.
 - (iv) The repeal of Part IV heading of Title 12.
- (2) This section shall take effect immediately.
- (3) The remainder of this act shall take effect November 1, 2014, or immediately, whichever is later.

APPROVED--The 22nd day of October, A.D. 2014.

TOM CORBETT