

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**SENATE BILL**

**No. 786**      Session of  
2003

INTRODUCED BY STOUT, BOSCOLA, COSTA, FERLO, FUMO, HUGHES,  
KASUNIC, KITCHEN, KUKOVICH, LAVALLE, LOGAN, MELLOW, MUSTO,  
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A. WILLIAMS AND WOZNIAK, JUNE 3, 2003

REFERRED TO COMMUNITY AND ECONOMIC DEVELOPMENT, JUNE 3, 2003

AN ACT

1 Amending the act of August 23, 1967 (P.L.251, No.102), entitled,  
2 as amended, "An act providing for the incorporation as public  
3 instrumentalities of the Commonwealth and as bodies corporate  
4 and politic of industrial and commercial development  
5 authorities for municipalities, counties and townships;  
6 prescribing the rights, powers and duties of such authorities  
7 hereafter incorporated; authorizing such authorities to  
8 acquire, by gift or purchase, to construct, improve and  
9 maintain industrial, specialized, or commercial development  
10 projects including projects for the elimination or prevention  
11 of blight and the control of air and water pollution, and to  
12 borrow money and issue bonds therefor; providing for the  
13 payment of such bonds and giving security therefor, and  
14 prescribing the rights of the holders of such bonds;  
15 authorizing the lease or sale of industrial, specialized, or  
16 commercial development projects to industrial, specialized,  
17 or commercial enterprises; authorizing any county,  
18 municipality or township to transfer or convey to such  
19 authorities, any facilities or property available for  
20 industrial, specialized, or commercial development projects;  
21 exempting the property and securities of such authorities  
22 from taxation; authorizing such authorities to enter into  
23 contracts with and to accept grants from the Federal  
24 Government or any agency thereof; and providing for approval  
25 by the Secretary of Commerce of the proceedings relating to  
26 industrial, specialized, or commercial development projects  
27 of such authorities," further providing for definitions, for  
28 financing authority indebtedness, for financing authority  
29 loans or financing and for prohibitions; establishing the  
30 Pennsylvania Opportunity Fund Program and the Pennsylvania  
31 Opportunity Fund Oversight Committee with powers and duties;  
32 and making an appropriation.

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

3 Section 1. The definitions of "department" and "secretary"  
4 in section 3 of the act of August 23, 1967 (P.L.251, No.102),  
5 known as the Economic Development Financing Law, are amended and  
6 the section is amended by adding definitions to read:

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

8 \* \* \*

9 "Department" means the Department of [Commerce] Community and  
10 Economic Development of the Commonwealth.

11 \* \* \*

12 "Oversight committee" means the Pennsylvania Opportunity Fund  
13 Oversight Committee established in section 15.4.

14 \* \* \*

15 "Program" means the Pennsylvania Opportunity Fund Program  
16 established in section 15.3.

17 \* \* \*

18 "Secretary" means the Secretary of [Commerce] Community and  
19 Economic Development of the Commonwealth.

20 \* \* \*

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

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

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

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

13 \* \* \*

14 Section 6.4. Financing Authority [Loans] Financing.--(a)

15 The financing authority shall ascertain to its satisfaction  
16 that:

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

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

27 (3) The project user may reasonably be expected to comply  
28 with the terms of such lease or use.

29 (4) The project complies with all rules and regulations of  
30 the financing authority, if any.

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

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

19 \* \* \*

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

21 Section 15.3. Pennsylvania Opportunity Fund Program.--There  
22 is hereby established within the financing authority a program  
23 to be known as the Pennsylvania Opportunity Fund Program, to be  
24 administered in accordance with this act.

25 Section 15.4. Pennsylvania Opportunity Fund Oversight  
26 Committee.--(a) There is hereby established a committee of the  
27 financing board consisting of not more than 13 members which  
28 shall have the delegated powers of the financing authority to  
29 operate the program. The committee shall consist of the  
30 following:

- 1       (1) The Governor or his designee.
- 2       (2) The State Treasurer or his designee.
- 3       (3) The Secretary of the Budget or his designee.
- 4       (4) The secretary or his designee.
- 5       (5) The Secretary of Banking or his designee.
- 6       (6) Four members of the General Assembly appointed as  
7 follows:
- 8       (i) One member appointed by the President pro tempore of the  
9 Senate.
- 10       (ii) One member appointed by the Minority Leader of the  
11 Senate.
- 12       (iii) One member appointed by the Speaker of the House of  
13 Representatives.
- 14       (iv) One member appointed by the Minority Leader of the  
15 House of Representatives.
- 16       (7) Four members appointed by the Governor.
- 17       (b) (1) The members appointed by the General Assembly shall  
18 serve at the pleasure of the appointing authority.
- 19       (2) Gubernatorial appointments shall serve for a term of  
20 four years from appointment and until a successor is appointed,  
21 except that two of the gubernatorial members shall be appointed  
22 to terms of only two years and their successors shall be  
23 appointed to terms of four years.
- 24       (c) Members of the oversight committee shall serve without  
25 compensation but shall be reimbursed for actual and reasonable  
26 expenses incurred in the performance of their official duties.
- 27       (d) The Governor shall serve as chairperson of the oversight  
28 committee or the Governor may designate another member to serve  
29 as chairperson, and the members of the oversight committee shall  
30 select one member to serve as secretary.

1 (e) A designee may lawfully vote and otherwise act on behalf  
2 of the member of the oversight committee. The designation shall  
3 be in writing, delivered to the oversight committee and continue  
4 in effect until revoked or amended in writing. Members of the  
5 oversight committee who are legislators may appoint designees to  
6 represent them at meetings of the oversight committee.

7 (f) A majority of the members of the oversight committee  
8 then serving shall constitute a quorum of the oversight  
9 committee for the purposes of conducting business. Only members  
10 or their designees who are physically present at a meeting or  
11 able to participate fully in the deliberations by appropriate  
12 telecommunications means shall count toward a quorum of the  
13 oversight committee.

14 Section 15.5. Additional Powers and Duties of the Oversight  
15 Committee.--(a) In addition to the delegated powers of the  
16 financing authority, the oversight committee shall have the  
17 following additional powers and duties:

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

22 (2) To control and manage, invest and reinvest money  
23 received from such bond financing, from repayments and  
24 redeposits or from any other source derived and dedicated for  
25 use in the program and for all expenses associated with the  
26 program. Such funds may be deposited by the oversight committee  
27 in banks or trust companies in special accounts for use by the  
28 oversight committee as set forth above, including the use of  
29 interest earned on such accounts. Moneys in such accounts shall  
30 be paid out on order of the oversight committee.

1       (3) To hold, purchase, sell, lend, assign, transfer or  
2 dispose of any category of securities and investments, in which  
3 money dedicated for use in the program has been invested and the  
4 proceeds of such investments.

5       (4) To use funds to guarantee tax increment financing  
6 projects.

7       (b) Funds deposited by the oversight committee in special  
8 accounts in banks or trust companies may be prudently invested  
9 in:

10       (1) Obligations of the United States government, its  
11 agencies and instrumentalities, which have a liquid market with  
12 a readily determinable market value.

13       (2) Certificates of deposit and other evidences of deposit  
14 at financial institutions, bankers' acceptances and commercial  
15 paper rated in the highest tier, for example, A1, P1, F1 or D1  
16 or higher, by a nationally recognized rating agency.

17       (3) Obligations of State and local governments, and of  
18 public authorities, which obligations are rated in one of the  
19 top three rating categories by a nationally recognized rating  
20 agency.

21       (4) Repurchase agreements whose underlying purchased  
22 securities consist of the foregoing.

23       (5) Money market funds regulated by the Securities and  
24 Exchange Commission having aggregate assets of at least fifty  
25 million dollars (\$50,000,000) on the date of investment and  
26 whose portfolio may consist only of dollar-denominated  
27 securities.

28       (c) Actions taken by the oversight committee shall not be  
29 subject to review by the financing board.

30       (d) In the exercise of its powers, the oversight committee



1 must exercise that degree of judgment, skill and care under the  
2 circumstances then prevailing that persons of prudence,  
3 discretion and intelligence, who are familiar with investment  
4 matters, exercise in the management of their own affairs, not in  
5 regard to speculation but in regard to permanent disposition of  
6 the funds, considering the probable income to be derived from  
7 the investments and the probable safety of their capital.

8 (e) The members of the oversight committee and their  
9 professional personnel shall stand in a fiduciary relationship  
10 to the Commonwealth and its citizens regarding the investments  
11 of the money of the fund and shall not profit, either directly  
12 or indirectly, with respect thereto.

13 Section 15.6. Pennsylvania Opportunity Fund Program.--The  
14 Pennsylvania Opportunity Fund Program shall consist of a program  
15 that will provide loan guarantees to issuers of bonds or other  
16 indebtedness for tax increment financing in accordance with the  
17 provisions of the act of July 11, 1990 (P.L.465, No.113), known  
18 as the Tax Increment Financing Act. The oversight committee may  
19 establish a loan guarantee program for this purpose. The  
20 oversight committee may commit up to one hundred million dollars  
21 (\$100,000,000) in first-round funds to this program. Before any  
22 projects are approved under this program, the oversight  
23 committee must develop written guidelines. With regard to this  
24 program, there is no limit on the amount of second-round or  
25 subsequent-round funding that may be provided to the program by  
26 the oversight committee, provided such second-round or  
27 subsequent-round funding comes from sources other than bond  
28 proceeds.

29 Section 15.7. Annual Report.--By November 30, 2004, and  
30 annually thereafter, the oversight committee shall submit a

1 report to the Governor and to the chair and minority chair of  
2 the Appropriations Committee of the Senate and the chair and  
3 minority chair of the Appropriations Committee of the House of  
4 Representatives. The report shall provide an analysis of the  
5 status of the current investments and transactions made by the  
6 oversight committee or the department over the previous fiscal  
7 year for the program.

8 Section 15.8. Reporting of Tax Increment Financing  
9 Projects.--The department is hereby authorized to gather  
10 information relating to the issuance of tax increment financing  
11 bonds within the Commonwealth, for projects that are in  
12 existence at the time of the effective date of this section and  
13 for projects that come into existence thereafter. Issuers of tax  
14 increment financing bonds are hereby directed to provide such  
15 information to the department upon request. The department is  
16 authorized to take whatever steps are necessary to obtain such  
17 information. The department will provide the information it has  
18 collected to the oversight committee for inclusion in its annual  
19 report to the General Assembly.

20 Section 4. The sum of \$12,000,000 is hereby appropriated to  
21 the financing authority for the purposes set forth in this act.

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