

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 787 Session of
2003

INTRODUCED BY MUSTO, KITCHEN, STACK, WAGNER, MELLOW,
TARTAGLIONE, LAVALLE, KUKOVICH, D. WHITE, STOUT, C. WILLIAMS,
FUMO, COSTA, KASUNIC, LOGAN, SCHWARTZ, O'PAKE, PUNT,
RAFFERTY, HUGHES, FERLO, WOZNIAK, BOSCOLA, A. WILLIAMS,
LEMMOND, ORIE AND WONDERLING, 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;

1 and making an appropriation.

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

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

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

9 * * *

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

12 * * *

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

15 * * *

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

18 * * *

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

21 * * *

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

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

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

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

14 * * *

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

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

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

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

30 (4) The project complies with all rules and regulations of

1 the financing authority, if any.

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

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

20 * * *

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

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

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

1 following:

2 (1) The Governor or his designee.

3 (2) The State Treasurer or his designee.

4 (3) The Secretary of the Budget or his designee.

5 (4) The secretary or his designee.

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

7 (6) Four members of the General Assembly appointed as

8 follows:

9 (i) One member appointed by the President pro tempore of the
10 Senate.

11 (ii) One member appointed by the Minority Leader of the
12 Senate.

13 (iii) One member appointed by the Speaker of the House of
14 Representatives.

15 (iv) One member appointed by the Minority Leader of the
16 House of Representatives.

17 (7) Four members appointed by the Governor.

18 (b) (1) The members appointed by the General Assembly shall
19 serve at the pleasure of the appointing authority.

20 (2) Gubernatorial appointments shall serve for a term of
21 four years from appointment and until a successor is appointed,
22 except that two of the gubernatorial members shall be appointed
23 to terms of only two years and their successors shall be
24 appointed to terms of four years.

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

28 (d) The Governor shall serve as chairperson of the oversight
29 committee or the Governor may designate another member to serve
30 as chairperson, and the members of the oversight committee shall

1 select one member to serve as secretary.

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

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

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

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

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

1 be paid out on order of the oversight committee.

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

6 (4) To make loans and grants to assist in the acquisition
7 and preparation of sites for future development. Such loans
8 and/or grants may be made by providing funds to the department
9 to administer on behalf of the oversight committee.

10 (b) Funds deposited by the oversight committee in special
11 accounts in banks or trust companies may be prudently invested
12 in:

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

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

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

24 (4) Repurchase agreements whose underlying purchased
25 securities consist of the foregoing.

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

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

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

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

16 Section 15.6. Pennsylvania Opportunity Fund Program.--The
17 Pennsylvania Opportunity Fund Program shall consist of a program
18 that will provide loans for the development and preparation of
19 sites for future use by businesses, private developers or
20 others. The oversight committee may establish a loan and grant
21 program for this purpose, or it may contribute such moneys to
22 the department for the use by the department under one or more
23 programs administered by the department which are consistent
24 with the purpose of this program. The oversight committee may
25 commit up to three hundred million dollars (\$300,000,000) in
26 first-round funds to this program. Before any projects are
27 approved under this program, the oversight committee or the
28 department, as appropriate, must develop written guidelines.
29 With regard to this program, there is no limit on the amount of
30 second-round or subsequent-round funding that may be provided to

1 the program by the oversight committee, provided such second-
2 round or subsequent-round funding comes from sources other than
3 bond proceeds.

4 Section 15.7. Annual Report.--By November 30, 2004, and
5 annually thereafter, the oversight committee shall submit a
6 report to the Governor and to the chair and minority chair of
7 the Appropriations Committee of the Senate and the chair and
8 minority chair of the Appropriations Committee of the House of
9 Representatives. The report shall provide an analysis of the
10 status of the current investments and transactions made by the
11 oversight committee or the department over the previous fiscal
12 year for the program.

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

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

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