

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 788 Session of
2003

INTRODUCED BY WAGNER, KITCHEN, KUKOVICH, STACK, TARTAGLIONE,
LAVALLE, C. WILLIAMS, FERLO, FUMO, COSTA, KASUNIC, LOGAN,
MUSTO, MELLOW, SCHWARTZ, STOUT, O'PAKE, BOSCOLA, WOZNIAK,
HUGHES AND A. WILLIAMS, 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 (b) Funds deposited by the oversight committee in special
6 accounts in banks or trust companies may be prudently invested
7 in:

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

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

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

19 (4) Repurchase agreements whose underlying purchased
20 securities consist of the foregoing.

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

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

28 (d) In the exercise of its powers, the oversight committee
29 must exercise that degree of judgment, skill and care under the
30 circumstances then prevailing that persons of prudence,

discretion and intelligence, who are familiar with investment matters, exercise in the management of their own affairs, not in regard to speculation but in regard to permanent disposition of the funds, considering the probable income to be derived from the investments and the probable safety of their capital.

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

Section 15.6. Pennsylvania Opportunity Fund Program.--The Pennsylvania Opportunity Fund Program shall consist of a program that will support the creation and growth of new employment through equity capital provided through professional fund managers under contractual agreement with the oversight committee to promote company start-ups and expansions. The oversight committee may make equity capital available which meets the standard of prudence set forth section 15.5(d) by providing funds to partnerships that make investments in any businesses that are expected to grow substantially in the future and in which the expected returns on investment are to come predominantly from increases in value of the interests and are not interests in or secured by real estate. The oversight committee may invest in one or more such partnerships or comparable investment entities provided that the investment guidelines and strategies of each investment entity require that all investments will be made in companies located primarily in the Commonwealth or in companies willing to relocate significant business operations to the Commonwealth and that the partnership must agree to operate under a prudent expert standard of care.

1 The liability of the oversight committee shall be limited to the
2 amount of its investment under this section. The oversight
3 committee may commit up to two hundred fifty million dollars
4 (\$250,000,000) in first-round funds to this program, provided
5 that the oversight committee investment is matched on at least a
6 one dollar (\$1) for one dollar (\$1) basis with private funds.
7 The oversight committee shall establish the types of project
8 investments that may be made by a partnership utilizing
9 oversight committee funds. With regard to this program, there is
10 no limit on the amount of second-round or subsequent-round
11 funding that may be provided to the program by the oversight
12 committee, provided such second-round or subsequent-round
13 funding comes from sources other than bond proceeds.

14 Section 15.7. Annual Report.--By November 30, 2004, and
15 annually thereafter, the oversight committee shall submit a
16 report to the Governor and to the chair and minority chair of
17 the Appropriations Committee of the Senate and the chair and
18 minority chair of the Appropriations Committee of the House of
19 Representatives. The report shall provide an analysis of the
20 status of the current investments and transactions made by the
21 oversight committee or the department over the previous fiscal
22 year for the program.

23 Section 15.8. Reporting of Tax Increment Financing
24 Projects.--The department is hereby authorized to gather
25 information relating to the issuance of tax increment financing
26 bonds within the Commonwealth, for projects that are in
27 existence at the time of the effective date of this section and
28 for projects that come into existence thereafter. Issuers of tax
29 increment financing bonds are hereby directed to provide such
30 information to the department upon request. The department is

1 authorized to take whatever steps are necessary to obtain such
2 information. The department will provide the information it has
3 collected to the oversight committee for inclusion in its annual
4 report to the General Assembly.

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

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