

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1026 Session of 2004

INTRODUCED BY LAVALLE, GORDNER, C. WILLIAMS, MELLOW, O' PAKE, WAGNER, MUSTO, KASUNIC, STOUT, FUMO, BOSCOLA, COSTA, FERLO, HUGHES, KITCHEN, KUKOVICH, LOGAN, SCHWARTZ, STACK, TARTAGLIONE, A. WILLIAMS, WOZNIAK, ROBBINS, PIPPY AND ERICKSON, FEBRUARY 10, 2004

SENATOR PUNT, COMMUNITY AND ECONOMIC DEVELOPMENT, AS AMENDED, MARCH 22, 2004

AN ACT

1 Amending Title 64 (Public Authorities and Quasi-Public
2 Corporations) of the Pennsylvania Consolidated Statutes,
3 providing for economic development financing AND FOR MONEY
4 APPROPRIATED TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC
5 DEVELOPMENT FOR THE BASE RETENTION AND CONVERSION
6 PENNSYLVANIA ACTION COMMITTEE; AND MAKING A REPEAL RELATED TO
7 MONEY APPROPRIATED TO THE DEPARTMENT OF COMMUNITY AND
8 ECONOMIC DEVELOPMENT FOR THE BASE RETENTION AND CONVERSION
9 PENNSYLVANIA ACTION COMMITTEE.

<—

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

12 Section 1. Title 64 of the Pennsylvania Consolidated
13 Statutes is amended by adding a part to read:

PART II

ECONOMIC DEVELOPMENT FINANCING

16 Chapter

17 11. Pennsylvania Industrial Development Authority

18 (Reserved)

1 13. Pennsylvania Economic Development Financing Authority
2 (Reserved)

3 15. Pennsylvania Economic Development Authority

4 CHAPTER 11

5 PENNSYLVANIA INDUSTRIAL DEVELOPMENT AUTHORITY

6 (RESERVED)

7 CHAPTER 13

8 PENNSYLVANIA ECONOMIC DEVELOPMENT FINANCING AUTHORITY

9 (RESERVED)

10 CHAPTER 15

11 PENNSYLVANIA ECONOMIC DEVELOPMENT AUTHORITY

12 Subchapter

13 A. General Provisions

14 B. Structure and Powers

15 C. Bonds

16 D. Authority Loans

17 E. Programs

18 SUBCHAPTER A

19 GENERAL PROVISIONS

20 Sec.

21 1501. Scope.

22 1502. Construction.

23 1503. Findings and declaration of policy.

24 1504. Definitions.

25 § 1501. Scope.

26 This chapter relates to the Pennsylvania Economic Development
27 Authority.

28 § 1502. Construction.

29 This chapter shall be liberally construed in order to effect
30 the legislative and public purposes of section 1503 (relating to

1 findings and declaration of policy).

2 § 1503. Findings and declaration of policy.

3 The General Assembly finds and declares as follows:

4 (1) Economic insecurity due to unemployment is at any
5 time harmful to the health, safety, morals and general
6 welfare of the people of this Commonwealth. A minimum level
7 of unemployment and a maximum level of business opportunity
8 and the elimination or prevention of blight can best be
9 provided by the promotion, attraction, stimulation,
10 rehabilitation and revitalization of industrial, commercial,
11 tourism-related, production agriculture and other economic
12 activities in this Commonwealth. The promotion of these
13 activities will also enhance their competitiveness in the
14 global economy.

15 (2) Many existing industrial, commercial and other
16 economic activities throughout this Commonwealth could become
17 more competitive and could expand more rapidly if additional
18 means of financing were available for modern buildings, plant
19 facilities, modern machinery and equipment and other capital
20 needs. Additional activities could be attracted to this
21 Commonwealth if additional means of financing were available
22 to acquire, construct, rehabilitate and expand facilities.
23 Financing for cost-savings activities related to buildings,
24 plants, machinery and equipment and other facilities would
25 further the purposes of this paragraph.

26 (3) It is the policy of the Commonwealth to promote the
27 health, safety, employment, business opportunities, economic
28 activity and general welfare of the people by establishing an
29 authority to assist in financing economic development.

30 § 1504. Definitions.

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

4 "Authority." The Pennsylvania Economic Development Authority
5 established in section 1511 (relating to authority).

6 "Board." The board of the authority continued by section
7 1512 (relating to board).

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

10 "Project." Any industrial facility, commercial facility,
11 pollution control facility, energy conversion facility, energy-
12 producing facility, disaster relief project facility, public
13 facility and other facility or activity which promotes any of
14 the public purposes set forth in section 1503 (relating to
15 findings and declaration of policy). A project may consist
16 solely of the financing of operating expenses. The term
17 includes:

18 (1) Land, interests in land, easements, appurtenances,
19 improvements, buildings, structures, equipment and
20 furnishings.

21 (2) Other real or personal property, tangible or
22 intangible or interest in real or personal property, alone or
23 in combination.

24 (3) Working capital and other capital needs for
25 industrial, commercial and other economic or cost savings
26 activities.

27 SUBCHAPTER B

28 STRUCTURE AND POWERS

29 Sec.

30 1511. Authority.

1 1512. Board.

2 1513. Powers.

3 § 1511. Authority.

4 (a) Establishment.--The Pennsylvania Economic Development
5 Authority is established. The authority shall be an
6 instrumentality of the Commonwealth and a body corporate and
7 politic, with corporate succession.

8 (b) Governance.--The authority shall be governed and the
9 powers of the authority shall be exercised by the board.

10 (c) Revenue.--Expenses of the authority shall be paid from
11 assets or income of the authority. Except as provided in this
12 chapter or by other law, the Commonwealth shall not be
13 responsible for funding the expenses of the authority.

14 (d) Fiscal year.--The fiscal year of the authority shall be
15 the same as the fiscal year of the Commonwealth.

16 (e) Funds of authority.--The authority may create funds and
17 accounts necessary or desirable for its corporate purposes. No
18 other provision of this chapter shall be construed to prohibit
19 the authority from creating within any fund one or more accounts
20 which may be used or pledged by the authority for a special
21 purpose.

22 (f) Audit.--The accounts and books of the authority shall be
23 examined and audited annually by a recognized independent
24 certified public accounting firm.

25 (g) General Assembly review.--

26 (1) The Appropriations Committee of the Senate and the
27 Appropriations Committee of the House of Representatives have
28 the right to examine the books, accounts and records of the
29 authority.

30 (2) The authority shall annually file a copy of the

1 audit required by subsection (f) with the Appropriations
2 Committee of the Senate and the Appropriations Committee of
3 the House of Representatives.

4 (h) Publication.--The authority shall annually publish a
5 concise financial statement in the Pennsylvania Bulletin.

6 (i) Cooperation.--Executive agencies shall cooperate with
7 and provide assistance to the authority without financial
8 reimbursement.

9 (j) Dissolution.--The authority may be dissolved by law if
10 all outstanding liabilities of the authority, including bonds
11 and other contractual obligations, have been fully paid,
12 retired, satisfied or discharged, or provision has been made for
13 payment of all outstanding liabilities of the authority,
14 including bonds and other contractual obligations. Upon the
15 dissolution of the authority, all funds, assets and other
16 property of the authority shall vest in the Commonwealth.

17 (k) Applicability.--The following acts shall apply to the
18 board:

19 (1) The act of June 21, 1957 (P.L.390, No.212), referred
20 to as the Right-to-Know Law.

21 (2) The act of July 19, 1957 (P.L.1017, No.451), known
22 as the State Adverse Interest Act.

23 (3) The provisions of 65 Pa.C.S. Chs. 7 (relating to
24 open meetings) and 11 (relating to ethics standards and
25 financial disclosure).

26 § 1512. Board.

27 (a) Composition.--The board of the authority shall be
28 composed of the following members:

29 (1) The Secretary of Community and Economic Development.

30 (2) The Secretary of the Budget.

1 (3) The Secretary of Banking.

2 (4) Four legislative appointees.

3 (i) Appointments are as follows:

4 (A) One individual appointed by the President
5 pro tempore of the Senate.

6 (B) One individual appointed by the Minority
7 Leader of the Senate.

8 (C) One individual appointed by the Speaker of
9 the House of Representatives.

10 (D) One individual appointed by the Minority
11 Leader of the House of Representatives.

12 ~~(ii) A legislative appointee under this paragraph~~ <—
13 ~~may appoint a designee.~~

14 ~~(iii)~~ (II) Legislative appointees shall serve at the <—
15 pleasure of the appointing authority.

16 (b) Organization.--The Governor shall select a member of the
17 board to serve as chairperson. The members shall select from
18 among themselves such officers as they shall determine.

19 (c) Meetings.--The board shall meet at the call of the
20 chairperson but shall meet at least once each month.

21 (d) Quorum.--~~A majority~~ SIX MEMBERS of the board shall <—
22 constitute a quorum. The consent of at least ~~five~~ SIX members of <—
23 the board shall be necessary to take any action on behalf of the
24 authority.

25 (e) Compensation.--The members of the board shall be
26 entitled to no compensation for their services as members but
27 shall be entitled to reimbursement for all necessary expenses
28 incurred in connection with the performance of their duties as
29 members.

30 (f) Liability.--Members of the board shall not be liable

1 personally on any obligations of the authority, including bonds
2 of the authority.

3 § 1513. Powers.

4 (a) Powers.--The authority, as a public corporation and
5 governmental instrumentality exercising public powers of the
6 Commonwealth, has the following powers:

7 (1) To have existence until its existence is terminated
8 by law.

9 (2) To adopt bylaws and guidelines as necessary.

10 (3) To sue and be sued, implead and be impleaded,
11 interplead, complain and defend in any court.

12 (4) To adopt, use and alter a corporate seal.

13 (5) To employ an executive director and other persons as
14 are necessary or convenient for carrying on the business of
15 the authority.

16 (6) To retain attorneys, accountants, auditors and
17 financial experts, to render services and engage the services
18 of other advisors, consultants and agents as necessary. The
19 chairman shall ensure that minority-owned or minority-
20 controlled firms have an opportunity to participate to a
21 significant degree in the provision of contractual services
22 purchased by the authority.

23 (7) To pay or satisfy obligations of the authority.

24 (8) To contract and execute instruments, including
25 financing agreements, letters of credit, guarantees,
26 sureties, mortgages, loans, standby loan commitments and
27 contracts of insurance, which are necessary or appropriate
28 for carrying on the business of the authority. This power
29 includes the ability to make and execute contracts for the
30 servicing of loans and mortgages acquired by the authority.

1 (9) To borrow money, issue bonds, obtain lines and
2 letters of credit and incur debt.

3 (10) To pledge the credit of the authority and provide
4 security and liquidity to obligees of the authority as the
5 authority deems necessary or appropriate.

6 (11) To negotiate modifications or alterations in
7 mortgages or security interests.

8 (12) To foreclose on a mortgage or security interest in
9 default.

10 (13) To commence any action necessary to protect or
11 enforce any right conferred upon the authority by any law,
12 mortgage, security agreement, contract or other agreement.

13 (14) To bid for or purchase property which was the
14 subject of a mortgage or security interest at a foreclosure
15 or other sale and to acquire and take possession of that
16 property.

17 (15) To charge and collect fees and charges in
18 connection with loan commitments and servicing, including
19 reimbursement of costs of financing.

20 (16) To acquire, accept, purchase, receive, collect,
21 hold, convey and invest funds, fees and property, whether
22 tangible or intangible, from all sources, directly or by
23 assignment, pledge or otherwise.

24 (17) To sell, transfer, convey and dispose of any
25 property, whether tangible or intangible.

26 (18) To acquire and sell loans, mortgages and security
27 interests at public or private sale.

28 (19) To provide financial assistance to applicants and
29 project users.

30 (20) To agree to and comply with any conditions attached

1 to Federal or Commonwealth financial assistance not
2 inconsistent with the provisions of this chapter.

3 (21) To make rules regarding the operation of properties
4 and facilities of the authority subject to agreements with
5 obligees of the authority.

6 (22) To develop contractually binding policies to assure
7 that:

8 (i) all persons, including the authority's
9 contractors, subcontractors, assignees, lessees, agents,
10 vendors and suppliers, are accorded equality of
11 opportunity in employment and contracting associated with
12 projects and programs authorized under this chapter; and

13 (ii) contracting parties demonstrate diversity in
14 ownership of equity interests.

15 (23) To exercise rights provided by law for the benefit
16 or protection of the authority or obligees of the authority.

17 (24) To invest money of the authority not required for
18 immediate use, including proceeds from the sale of any bonds,
19 as the board determines, subject to any agreement with
20 bondholders stated in the authorizing resolution providing
21 for the issuance of bonds.

22 (25) To procure insurance against any loss in connection
23 with its programs, property and other assets.

24 (26) To enter into agreements providing for the
25 acquisition of projects comprising or including public
26 facilities for financing purposes only.

27 (27) To promulgate regulations containing restrictions
28 as it may deem necessary or appropriate to effectuate the
29 public purposes of this chapter.

30 (28) To finance all or part of an interagency project

1 which meets the requirements of section 1521(a)(2) (relating
2 to bond issuance).

3 (29) To negotiate and enter into interest rate exchange
4 agreements, interest rate cap agreements, collar agreements,
5 corridor agreements, ceiling agreements, floor agreements,
6 forward agreements, float agreements and other similar
7 arrangements, which, in the judgment of the authority, will
8 assist the authority in managing the interest costs of the
9 authority.

10 (30) To enter into financing agreements with applicants
11 and project users providing, among other things:

12 (i) for loan, lease or sale financing or other
13 financing of projects for applicants or project users;

14 (ii) for loan, rental or purchase price payments or
15 other payments, sufficient to amortize the principal,
16 interest and premium, if any, of all bonds and
17 contractual obligations of the authority incurred to
18 provide funds to pay the costs of the projects to be
19 financed;

20 (iii) for the applicants or project users to pay or
21 cause to be paid all other costs of acquiring,
22 constructing, maintaining and operating the projects;

23 (iv) for conveyance with or without consideration of
24 any part or all of a project to the project user or
25 applicant on or before payment of all bonds and
26 contractual obligations of the authority incurred with
27 respect to the project; and

28 (v) for other matters as are customary in those
29 agreements or as may be deemed necessary or appropriate
30 by the authority.

1 tax-exempt bonds on behalf of projects comprising
2 industrial facilities, commercial facilities, pollution
3 control facilities, energy conversion facilities, energy-
4 producing facilities and disaster relief project
5 facilities, other than Pennsylvania Opportunity Fund
6 projects, has been authorized by a local economic
7 development financing authority or a group of local
8 economic development financing authorities or by a local
9 economic development agency or a group of local economic
10 development agencies.

11 (ii) That the authority may issue taxable or tax-
12 exempt bonds on behalf of interagency projects, only if:

13 (A) the applicant has first applied to PENNVEST
14 for financing under the provisions of the act of
15 March 1, 1988 (P.L.82, No.16), known as the
16 Pennsylvania Infrastructure Investment Authority Act;
17 and

18 (B) PENNVEST, in writing, refers the applicant
19 to the authority to finance all or part of the
20 interagency project in accordance with this chapter.

21 (iii) That the issuance by the authority of taxable
22 or tax-exempt bonds for a public facility, for
23 interagency projects and for projects for roads and
24 transportation facilities and transportation systems has
25 been authorized by a municipality, municipal authority or
26 Commonwealth agency and that both the applicant and the
27 authority have determined that the cost of obtaining the
28 financing for the public facility will be reduced through
29 the issuance of bonds through the authority. For purposes
30 of the determination required in this subparagraph, any

1 financing for a public facility that the authority
2 reasonably believes could have received a rating of "A"
3 or better from a nationally recognized rating agency
4 shall be presumed not to be eligible for financing by the
5 authority under this paragraph.

6 (2) The authority may, as it deems necessary and
7 desirable, use the proceeds of bonds issued for all of the
8 following:

9 (i) Making loans.

10 (ii) Purchasing loans, mortgages, security interests
11 or loan participations.

12 (iii) Paying incidental expenses in connection with
13 activity under subparagraphs (i) and (ii).

14 (iv) Paying expenses of authorizing and issuing the
15 bonds.

16 (v) Paying interest on the bonds until revenues of
17 the project are available in sufficient amounts to pay
18 interest.

19 (vi) Funding reserves.

20 (b) Method of financing.--The financing of projects may be
21 with tax-exempt bonds or taxable bonds issued pursuant to this
22 chapter and may be direct through application of bond proceeds
23 or other funds to pay project costs or indirect through stock
24 purchases or other means as the authority approves.

25 (c) Authorization requirements.--

26 (1) Bonds of the authority shall be authorized by a
27 resolution of the board.

28 (2) The bonds shall, as provided in the resolution of
29 the board:

30 (i) be of a series;

- 1 (ii) bear a date or dates;
- 2 (iii) bear or accrue interest at any rate or rates,
- 3 whether fixed or variable;
- 4 (iv) be in denominations;
- 5 (v) be in any form, either coupon or fully
- 6 registered without coupons or in certificated or book-
- 7 entry-only form;
- 8 (vi) carry registration, exchangeability and
- 9 interchangeability privileges;
- 10 (vii) be payable in any medium of payment and at any
- 11 place or places;
- 12 (viii) mature on a date or dates not to exceed 40
- 13 years from the bonds' original issue date; and
- 14 (ix) be subject to terms of redemption, if any.

15 (3) Bonds shall be signed by or shall bear the facsimile
16 signature of the officer designated by the board.

17 (4) Interest coupons shall be attached to coupon bonds
18 and shall bear the facsimile signature of the officer
19 designated by the board.

20 (5) Bonds may be authenticated by an authenticating
21 agent, fiscal agent or trustee.

22 (6) Bonds may be issued and delivered notwithstanding
23 that the officer signing the bonds or whose facsimile
24 signature is on a coupon has ceased to be the officer at the
25 time when the bond is actually delivered.

26 (d) No debt or liability of the Commonwealth.--

27 (1) Bonds issued under this chapter shall not be a debt
28 or liability of the Commonwealth and shall not create or
29 constitute any indebtedness, liability or obligation of the
30 Commonwealth.

1 (2) Bonds shall be payable solely from revenues or funds
2 pledged or available for their repayment as authorized in
3 this chapter, including the proceeds of any issue of bonds
4 and, in the case of a public project, the pledge of fees,
5 taxes and other revenues by a political subdivision or other
6 instrumentality of the Commonwealth.

7 (3) All bonds shall contain on their faces statements to
8 the effect that:

9 (i) the authority is obligated to pay the principal
10 of or the interest on the bonds only from its revenues,
11 receipts or funds pledged or available for their payment
12 as authorized in this chapter;

13 (ii) neither the Commonwealth nor any political
14 subdivision is obligated to pay the principal or
15 interest; and

16 (iii) neither the faith and credit nor the taxing
17 power of the Commonwealth or any political subdivision is
18 pledged to the payment of the principal of or the
19 interest on the bonds.

20 (e) Sale.--

21 (1) Bonds may be sold at public sale, invited sale or
22 private sale for the price or prices the authority
23 determines.

24 (2) The authority shall ensure that minority-owned or
25 minority-controlled firms have an opportunity to participate
26 in a significant way in bond sale activities.

27 (f) Interim receipts.--Pending the preparation of the
28 definitive bonds, interim receipts may be issued to the
29 purchaser or purchasers of the bonds and shall contain the terms
30 and conditions established by the authority.

1 (g) Negotiable instruments.--Bonds of the authority shall
2 have the qualities of negotiable instruments under 13 Pa.C.S.
3 (relating to commercial code).

4 (h) Refunding.--Subject to provisions of this chapter and
5 the terms of bonds or other contractual obligations issued in
6 accordance with this chapter, the authority may refund any
7 outstanding debt of the authority, whether the debt represents
8 principal or interest, in whole or in part, at any time. For the
9 purposes of this subsection, the term "refund" and its
10 variations means the issuance and sale of obligations the
11 proceeds of which are used or are to be used for the payment or
12 redemption of outstanding obligations upon or prior to maturity.
13 § 1522. Commonwealth taxation.

14 (a) General.--The effectuation of the purposes of the
15 authority is in all respects for the benefit of the people of
16 this Commonwealth; for the increase of their commerce and
17 prosperity; and for the improvement of their health, safety,
18 welfare and living conditions.

19 (b) Authority.--Since the authority, as a public
20 instrumentality of the Commonwealth, will be performing
21 essential governmental functions in effectuating these purposes,
22 the authority is not required to pay any taxes or assessments
23 upon any property acquired or used or permitted to be used by
24 the authority for its purposes.

25 (c) Bonds.--Bonds issued by the authority, the transfer and
26 the income from the bonds, including profit made on their sale,
27 are free from State and local taxation within this Commonwealth.
28 The exclusion under this subsection shall not extend to gift,
29 estate, succession or inheritance taxes or any other taxes not
30 levied directly on the bonds, their transfer, the income from

1 the bonds or the realization of profits on their sale.

2 § 1523. Federal taxation.

3 (a) Allocation.--If the bonds issued by the authority for a
4 project are tax-exempt bonds for which Federal law requires an
5 allocation, the department shall issue an allocation charging a
6 small issue project's pro rata share of the issue to the county
7 in which the project will be located if the project requires a
8 type of allocation distributed by the department to counties.

9 (b) Approval.--If gubernatorial approval is required by
10 Federal or Commonwealth law, the Governor may approve the
11 issuance of bonds by the authority upon receipt of written
12 request for approval from the board. The written request must
13 state all of the following:

14 (1) The authority has conducted a public hearing, with
15 appropriate public notice, concerning the purposes for which
16 the bonds are to be issued.

17 (2) A description of the project or projects to be
18 financed.

19 (3) A description of the method of financing the project
20 or projects.

21 (4) A summary of the comments made and questions posed
22 at the public hearing.

23 § 1524. Validity of bonds; limitation on actions.

24 (a) Presumption.--A bond reciting in substance that it has
25 been issued by the authority to accomplish the public purposes
26 of this chapter shall be conclusively deemed in any suit, action
27 or proceeding involving the validity or enforceability of the
28 bonds or their security to have been issued for the public
29 purposes of this chapter.

30 (b) Estoppel.--After issuance, bonds shall be conclusively

1 presumed to be fully authorized and issued by all the laws of
2 this Commonwealth; and any person shall be estopped from
3 questioning their validity, sale, execution or delivery by the
4 authority.

5 § 1525. Provisions of bonds; trust agreements.

6 A resolution authorizing bonds or any trust agreement
7 approved by the authority in a resolution authorizing the bonds
8 may contain provisions to:

9 (1) Secure the bonds.

10 (2) Covenant against:

11 (i) pledging or granting a security interest in all
12 or any part of the authority's revenues or all or any
13 part of its property to which its right or title exists
14 or which may later come into existence; or

15 (ii) permitting or suffering any lien on all or any
16 part of its revenues or property.

17 (3) Covenant with respect to limiting the authority's
18 right to sell, pledge or otherwise dispose of bonds or notes
19 of governmental units, loan agreements or other property.

20 (4) Covenant as to additional bonds to be issued, as to
21 limitations on additional bonds, as to terms and conditions
22 of additional bonds and as to the custody, application,
23 investment and disposition of proceeds of bonds.

24 (5) Covenant as to the incurring of other debts or
25 obligations by the authority.

26 (6) Covenant as to the:

27 (i) payment of principal of or interest on bonds;

28 (ii) sources and methods of payment; and

29 (iii) rank or priority of bonds with respect to
30 liens or security interests.

1 (7) Provide for the replacement of lost, stolen,
2 destroyed or mutilated bonds.

3 (8) Covenant against extending the time for the payment
4 of bonds or interest.

5 (9) Covenant as to the redemption, purchase, tender of
6 bonds by the authority or the bondholders and the privilege
7 of exchange of bonds for other bonds.

8 (10) Create or authorize the creation of special funds
9 or accounts to be held in trust or otherwise for the benefit
10 of bondholders or of reserves for debt service or other
11 purposes.

12 (11) Covenant as to the use, investment and disposition
13 of the money held in special funds, accounts or reserves.

14 (12) Prescribe:

15 (i) the procedure, if any, by which the terms of any
16 contract with bondholders may be amended or abrogated;

17 (ii) the percentage of the principal amount of bonds
18 the holders of which must consent to the amendment or
19 abrogation; and

20 (iii) the manner in which the consent may be given.

21 (13) Covenant as to the use of any or all of the
22 authority's real or personal property or warrant its title.

23 (14) Provide for the maintenance of the authority's real
24 and personal property, the replacement of its real and
25 personal property, the insurance to be carried on its real
26 and personal property and the use and disposition of
27 insurance proceeds.

28 (15) Provide for rights, liabilities, powers and duties
29 arising upon the breach of any covenant, condition or
30 obligation.

1 (16) Prescribe:
2 (i) events of default;
3 (ii) terms and conditions upon which any or all of
4 the bonds become or may be declared due and payable
5 before stated maturity following an event of default; and
6 (iii) terms and conditions upon which the
7 declaration and its consequence may be waived.

8 (17) Pay the costs or expenses incident to:
9 (i) the enforcement of the bonds;
10 (ii) the provisions of the resolution authorizing
11 the issuance of the bonds;
12 (iii) the trust agreement securing the bonds; and
13 (iv) any covenant or agreement of the authority with
14 the holders of the bonds or other obligees of the
15 authority.

16 (18) Vest in a trustee, within or without this
17 Commonwealth, any property, rights, powers and duties in
18 trust, including rights with respect to the sale or other
19 disposition of notes and bonds of governmental units and
20 other instruments and security pledged under a resolution or
21 trust agreement for the benefit of bondholders and rights, by
22 suit or action, to foreclose a mortgage pledged under a
23 resolution or trust indenture for the benefit of bondholders.

24 (19) Limit the rights, powers and duties of a trustee
25 and the right of bondholders to appoint a trustee.

26 (20) Establish the terms and conditions upon which a
27 trustee or the bondholders may enforce a covenant or rights
28 securing or relating to the bonds.

29 (21) Obtain letters of credit, bond insurance and other
30 facilities for credit enhancement and liquidity.

1 (22) Exercise all or any part or combination of the
2 powers granted in this chapter.

3 (23) Make covenants other than and in addition to the
4 covenants expressly authorized by this chapter.

5 (24) Make any other covenant and do or refrain from
6 doing any other act and thing necessary, convenient or
7 desirable in order to better secure the bonds of the
8 authority or, in the absolute discretion of the authority, as
9 will tend to make bonds of the authority more marketable,
10 notwithstanding that the covenant, act or thing may not be
11 specifically enumerated in this chapter.

12 § 1526. Validity of pledge.

13 Any pledge of or grant of a security interest in revenues or
14 instruments made by the authority shall be valid and binding
15 from the time when the pledge is made. The revenues, receipts,
16 money, funds or other property or instruments pledged and later
17 received by the authority shall immediately be subject to the
18 lien of the pledge or security interest without any physical
19 delivery of the property pledged or further act. The lien of the
20 pledge or security interest shall be valid and binding as
21 against all parties having claims of any kind in tort, contract
22 or otherwise against the authority irrespective of whether the
23 parties have notice of the lien, pledge or security interest. No
24 instrument by which a pledge or security interest is created,
25 evidenced or noticed need be recorded or filed to perfect the
26 pledge or security interest, except in the records of the
27 authority.

28 § 1527. Commonwealth pledges.

29 (a) Bondholders.--The Commonwealth pledges to and agrees
30 with each obligee of the authority that the Commonwealth will

1 not limit or alter the rights and powers vested in the authority
2 or otherwise created by this chapter in any manner inconsistent
3 with the obligations of the authority to its obligees until all
4 bonds at any time issued, together with the interest on the
5 bonds, are fully paid and discharged.

6 (b) Lessees.--The Commonwealth pledges and agrees with any
7 person that, as owner of property which is leased or subleased
8 to or from the authority, it will not limit or alter the rights
9 and powers vested in the authority or otherwise created by this
10 chapter in any manner which impairs the obligations of the
11 authority until all the obligations of the authority under the
12 lease or sublease are fully met and discharged.

13 § 1528. Bonds to be legal investments.

14 (a) Investments.--Bonds issued pursuant to this chapter are
15 made securities in which all of the following may properly and
16 legally invest funds, including capital, deposits or other funds
17 in their control or belonging to them:

- 18 (1) Government agencies.
- 19 (2) Insurance companies.
- 20 (3) Trust companies.
- 21 (4) Banking associations, banking corporations and
22 savings banks.
- 23 (5) Investment companies.
- 24 (6) Executors, trustees and other fiduciaries.
- 25 (7) Trustees of any retirement, pension or annuity fund
26 or system of the Commonwealth.

27 (b) Deposits.--Bonds issued by the authority are made
28 securities which may properly and legally be deposited with and
29 received by any government agency for any purpose for which the
30 deposit of bonds or other obligations of the Commonwealth are

1 authorized by law.

2 § 1529. Bondholder rights.

3 The rights and remedies conferred upon or granted to
4 bondholders pursuant to this chapter shall be in addition to and
5 not in limitation of rights and remedies lawfully granted to
6 bondholders by the resolution providing for the issuance of
7 bonds or by any trust agreement or other agreement under which
8 the bonds may be issued or secured.

9 SUBCHAPTER D

10 AUTHORITY LOANS

11 Sec.

12 1541. Restrictions on use of funds.

13 1542. Funding.

14 § 1541. Restrictions on use of funds.

15 In addition to other provisions of this chapter limiting the
16 power of the authority to make loans or provide other financial
17 assistance to a particular project, no funds of the authority
18 shall be used with respect to a project if the authority would
19 be required, except upon foreclosure or except upon the
20 occurrence of a default in the payment or terms of any loan
21 made, to operate, service or maintain the project pursuant to
22 any lease or other agreement. Nothing shall prevent the
23 authority from transferring the property to the applicant,
24 project user or either of their designees at the end of the term
25 of the financing.

26 § 1542. Funding.

27 The following shall apply:

28 (1) The authority is authorized to incur debt, including
29 through the issuance of bonds, in an amount not to exceed
30 \$150,000,000 which shall be deposited into an account to fund

1 all of the following:

2 (i) Programs established by Subchapter F (relating
3 to programs).

4 (ii) The costs of the authority, the board and the
5 department which are incurred in connection with the
6 administration of the program.

7 (iii) For use by the board for the making of new
8 grants and the making of new and additional loans and
9 loan guarantees under section 1551 (relating to First
10 Industries).

11 (2) Deposits of funds made into the First Industries
12 Program Account, including funds paid as a result of the
13 payment of interest and principal on loans made under this
14 program and interest earned on the funds in the account,
15 shall be a revolving loan fund, for payment of interest on or
16 repayment of the debt incurred by the authority as authorized
17 in this chapter and for costs associated with the
18 administration of the program, as the board shall determine.

19 SUBCHAPTER E

20 PROGRAMS

21 Sec.

22 1551. First Industries.

23 § 1551. First Industries.

24 (a) Establishment.--There is established a program to be
25 known as the First Industries Program. The program shall provide
26 financial assistance in the form of loans, grants and guarantees
27 for tourism, agricultural and related projects located within
28 this Commonwealth.

29 (b) Applications for planning grants.--A project applicant
30 may submit an application to the board requesting a planning

1 grant in an amount not to exceed \$250,000 for the reimbursement
2 of costs of predevelopment and feasibility studies for a tourism
3 or agricultural project. The application shall be on the form
4 required by the board and shall include or demonstrate all of
5 the following:

6 (1) The applicant's name and address.

7 (2) The location of the project.

8 (3) A description of the project.

9 (4) An estimate of the cost of the predevelopment and
10 feasibility studies and the goal to be achieved by carrying
11 out the proposed studies.

12 (5) A statement of the amount of the planning grant
13 sought.

14 (6) Any other information required by the board.

15 (c) Review and approval of planning grant applications.--The
16 following shall apply:

17 (1) The board shall review the application and upon
18 being satisfied that all requirements have been met, the
19 board may approve the application and award a planning grant.
20 To be eligible for funding, a project must demonstrate one or
21 more of the following:

22 (i) The project involves a joint venture among two
23 or more tourism, agricultural or related entities that
24 will have a demonstrable impact on the economy of the
25 community or region where the venture will be located or
26 operational.

27 (ii) The project will promote research and
28 development efforts leading to increased
29 commercialization or utilization of farm commodities.

30 (iii) The project will result in environmentally

1 friendly or energy efficient agricultural operations.

2 (iv) The project will result in more cost-effective
3 and efficient marketing of regional tourism or
4 agricultural assets.

5 (v) The project will result in a substantial
6 increase in revenues for the Commonwealth or the host
7 municipality.

8 (vi) The project proposes to utilize Commonwealth-
9 owned natural resources for public/private development of
10 a tourism product.

11 (2) Copies of all reports and studies prepared with
12 planning grant funds shall be provided to the board and shall
13 be made available to any person upon request.

14 (d) Project financing.--The board may make funds available
15 to project applicants to finance the cost of a project. The
16 funds may be provided in the form of direct loans to project
17 applicants, loans to capitalize revolving loan funds operated by
18 nonprofit entities or guarantees of loans made by commercial
19 lending institutions. The board shall determine the amount of
20 funds provided under section 1542 (relating to funding) to be
21 allocated among the different methods of financing authorized in
22 subsections (e), (f) and (g), subject to the provisions of
23 subsection (h).

24 (e) Direct loans to project applicants.--The board may make
25 funds available to the department for loans for production
26 agriculture and tourism activities under the Small Business
27 First program or the Machinery and Equipment Loan Fund program
28 or any successor programs, as authorized under the act of June
29 29, 1996 (P.L.434, No.67), known as the Job Enhancement Act.
30 Loans shall be made in accordance with the terms and conditions

1 of those programs and may be made to any type of tourism,
2 production agriculture or related project that would be eligible
3 for financing under this chapter. After the department has
4 completed its review of the application and has determined that
5 the application should be recommended for approval, it shall
6 submit the application and its recommendation to the board for
7 approval and funding. Loans shall be administered by the
8 department, but all payments of loan principal and interest
9 shall be paid into an account.

10 (f) Applications for loans to local revolving loan funds.--
11 The following shall apply:

12 (1) A nonprofit entity that operates a revolving loan
13 fund may submit an application to the board requesting a loan
14 to capitalize a revolving loan fund administered by the
15 nonprofit entity. The application shall be on the form
16 required by the board and shall include or demonstrate all of
17 the following:

18 (i) The applicant's name and address.

19 (ii) The names of the applicant's executive
20 director, board of directors and all staff involved with
21 the operation and administration of the revolving loan
22 fund.

23 (iii) A copy of the applicant's last two years of
24 certified public accountant-prepared financial
25 statements.

26 (iv) A statement that the applicant will utilize the
27 funds received only for tourism and production
28 agriculture projects and a description of how the
29 revolving loan fund will accept, review, approve and
30 administer applications for funding.

1 (v) The collateral or security to be provided for
2 the loan.

3 (vi) Identification of any matching funds for the
4 project.

5 (vii) Any other information required by the board.

6 (2) The board shall review applications submitted under
7 paragraph (1) to determine all of the following:

8 (i) If the local revolving loan fund is financially
9 sound. If the applicant is an accredited community
10 development financial institution as determined by the
11 Pennsylvania Community Development Bank Operational
12 Committee, as authorized under the Job Enhancement Act,
13 the board may accept that determination in lieu of
14 conducting its own review of the financial soundness of
15 the fund.

16 (ii) If the proposed collateral or security is
17 sufficient to repay the loan or is offered in accordance
18 with the same terms and conditions provided to all other
19 lenders of capital for the revolving loan fund.

20 (iii) If the funds will be used to make loans to
21 tourism or production agriculture projects.

22 (iv) If the applicant complied with all other
23 criteria established by the board.

24 (3) Upon being satisfied that all requirements have been
25 met, the board may approve the application and award a loan
26 to the project for a term and at an interest rate to be
27 established by the board.

28 (g) Applications for loan guarantees.--The following shall
29 apply:

30 (1) A project applicant, which may include a commercial

1 lending institution on behalf of a borrower, may request a
2 loan guarantee for a loan received from a commercial lending
3 institution to assist with the financing of a tourism or
4 production agricultural project which has been the recipient
5 of a planning grant under subsection (b) or a project which
6 demonstrates significant private investment. The application
7 must be on the form required by the board and must include or
8 demonstrate all of the following:

9 (i) The applicant's name and address.

10 (ii) A description of the project.

11 (iii) A statement describing the likely economic
12 impact to this Commonwealth and the host municipality as
13 a result of the project.

14 (iv) A description of the project financing,
15 including terms, conditions and the collateral or
16 security required.

17 (v) The amount of the loan guarantee that is being
18 requested.

19 (vi) The total project cost and the identification
20 of all sources of capital for the project.

21 (vii) Any other information required by the board.

22 (2) The board shall review the application to determine
23 all of the following:

24 (i) If the proposed project is feasible and
25 demonstrates soundness in concept.

26 (ii) If the proposed collateral or security is
27 sufficient to cover the guarantee in the event of a call.

28 (iii) If the applicant complied with all other
29 criteria established by the board.

30 (3) Upon being satisfied that all requirements have been

1 met, the board may approve the application and award a loan
2 guarantee to the project. Loan guarantees shall be for no
3 more than 50% of the total project cost, or \$2,500,000,
4 whichever is less. The terms of the loan guarantee must be
5 agreed to by the commercial lending institution which is the
6 lender of the funds subject to the guarantee. The board may
7 establish a subcommittee composed of board members and staff
8 of the department to supervise the progress of projects which
9 receive loan guarantees under this section.

10 (h) Limitations.--

11 (1) Except upon foreclosure or default or violation of a
12 loan or loan guarantee made, the board may not approve an
13 application or finance a project if the board or authority
14 would be required to operate, service or maintain the project
15 under a lease or other agreement.

16 (2) No more than \$10,000,000 of the funds in the account
17 under section 1542 (relating to funding) may be used for
18 grants awarded under subsection (c).

19 (3) At least two-thirds of the funds made available
20 through debt incurred under section 1542 shall be used for
21 financing of production agriculture or related projects.

22 ~~Section 2. This act shall take effect in 60 days.~~ <—

23 SECTION 2. MONEY APPROPRIATED TO THE DEPARTMENT OF COMMUNITY <—
24 AND ECONOMIC DEVELOPMENT FOR THE BASE RETENTION AND CONVERSION
25 PENNSYLVANIA ACTION COMMITTEE SHALL BE USED FOR ALL OF THE
26 FOLLOWING:

27 (1) THE DEVELOPMENT OF A STATEWIDE STRATEGY.

28 (2) GRANTS FOR ECONOMIC IMPACT STUDIES, ENVIRONMENTAL
29 IMPACT STUDIES, ENCROACHMENT STUDIES, COMMUNITY AND REGIONAL
30 INTERACTION WITH MILITARY BASES, INFRASTRUCTURE NEEDS AT

1 MILITARY BASES AND JOB TRAINING NEEDS AT OR NEAR MILITARY
2 BASES. GRANTS SHALL BE AWARDED BY THE BASE RETENTION AND
3 CONVERSION PENNSYLVANIA ACTION COMMITTEE.

4 SECTION 3. SECTION 5 OF THE ACT OF FEBRUARY 12, 2004
5 (P.L.99, NO.12), ENTITLED "AN ACT AMENDING TITLE 12 (COMMERCE
6 AND TRADE) OF THE PENNSYLVANIA CONSOLIDATED STATUTES, CODIFYING
7 PORTIONS OF THE JOB ENHANCEMENT ACT; FURTHER PROVIDING FOR
8 CONTRACT REQUIREMENTS, FOR GUIDELINES, FOR ADMINISTRATION AND
9 FOR APPLICATION AND REVIEW REQUIREMENTS; PROVIDING FOR KEYSTONE
10 INNOVATION ZONES; AND MAKING REPEALS RELATING TO THE JOB
11 ENHANCEMENT ACT," IS REPEALED.

12 SECTION 4. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

13 (1) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT
14 IMMEDIATELY:

15 (I) SECTION 2 OF THIS ACT.

16 (II) SECTION 3 OF THIS ACT.

17 (III) THIS SECTION.

18 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
19 DAYS.