

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

SENATE BILL

No. 525 Session of  
2013

---

INTRODUCED BY WARD, VULAKOVICH, YUDICHAK, WOZNIAK, FOLMER,  
BLAKE, BAKER, WHITE, WAUGH, FONTANA, HUTCHINSON, ALLOWAY,  
BROWNE, GORDNER, BRUBAKER, ROBBINS, MENSCH, HUGHES AND  
SOLOBAY, MAY 15, 2013

---

REFERRED TO COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT,  
MAY 15, 2013

---

AN ACT

1 Amending Titles 12 (Commerce and Trade) and 64 (Public  
2 Authorities and Quasi-Public Corporations) of the  
3 Pennsylvania Consolidated Statutes, further providing for  
4 revolving loan program accounts; repealing First Industries  
5 Program and Second Stage Loan Program; providing for the  
6 Pennsylvania Business Development Authority; imposing duties  
7 on the Department of Community and Economic Development;  
8 repealing the Small Business First Program, the Machinery and  
9 Equipment Loan Program, the First Industries Program and the  
10 Second Stage Loan Program; and providing for First Industries  
11 Program, for Second Stage Loan Guarantee Program and for  
12 transfer from Commonwealth Financing Authority to  
13 Pennsylvania Business Development Authority for First  
14 Industries Program and Second Stage Loan Guarantee Program.

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

17 Section 1. Chapters 23 and 29 of Title 12 of the  
18 Pennsylvania Consolidated Statutes are repealed:

19 [CHAPTER 23

20 SMALL BUSINESS FIRST

21 Sec.

22 2301. Scope.

- 1 2302. Definitions.
- 2 2303. Establishment.
- 3 2304. Fund and accounts.
- 4 2305. Department responsibilities.
- 5 2306. Capital development loans.
- 6 2307. EDA loans.
- 7 2308. Loans in distressed communities.
- 8 2309. Pollution prevention assistance loans.
- 9 2310. Export financing loans.
- 10 2311. Reporting and inspection.
- 11 2312. Limitations.

12 § 2301. Scope.

13 This chapter relates to the Small Business First Program.

14 § 2302. Definitions.

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

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

22 "Agricultural producer." A person involved in the management  
23 and use of a normal agricultural operation for the production of  
24 a farm commodity.

25 "Apparel products." Products manufactured, woven, cut, sewn  
26 or otherwise similarly processed by mechanical or human effort  
27 from fabrics, leather or cloth and made for use as clothing,  
28 shoes or other attire.

29 "Applicant." A person that applies for a loan in accordance  
30 with this chapter.

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

8 "Capital development project." Land, buildings, equipment  
9 and machinery and working capital which is acquired,  
10 constructed, renovated or used by a small business in accordance  
11 with any of the following:

12 (1) As part of a for-profit project or venture not of a  
13 mercantile or service-related nature, except for hospitality  
14 industry projects.

15 (2) As part of an effort to:

16 (i) bring a small business into compliance with  
17 Federal or State environmental laws or regulations;

18 (ii) complete an approved remediation project; or

19 (iii) permit a small business to adopt generally  
20 acceptable pollution prevention practices.

21 (3) As part of an effort to provide assistance to a  
22 small business that is a recycler of municipal or commercial  
23 waste or that is a manufacturer using recycled municipal or  
24 commercial waste materials.

25 (4) As part of an effort to assist a small business with  
26 defense conversion activities.

27 (5) As part of a for-profit project or venture to  
28 manufacture products to be exported out of the United States  
29 by a small business which is not of a mercantile or service-  
30 related nature, except for export-related services and

1 international export-related mercantile ventures or advanced  
2 technology and computer-related services and mercantile  
3 ventures and which will increase this Commonwealth's national  
4 or international market shares.

5 (6) As part of a for-profit project or venture that  
6 meets the requirements of section 2308 (relating to loans in  
7 distressed communities)

8 (7) As part of an effort to assist in the start-up or  
9 expansion of a for-profit or not-for-profit child day-care  
10 center subject to licensure by the Commonwealth.

11 "Child day-care center." Any premises in which child day  
12 care is provided simultaneously for seven or more children who  
13 are not related to the provider.

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

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

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

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

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

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

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

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

1           (2) An area which is designated a subzone, expansion  
2 subzone or improvement subzone under the act of October 6,  
3 1998 (P.L.705, No.92), known as the Keystone Opportunity Zone  
4 and Keystone Opportunity Expansion Zone Act.

5           (3) Any other geographic area designated by the  
6 department as distressed. The designation shall be published  
7 in the Pennsylvania Bulletin.

8       "EDA loan." A loan made under this chapter utilizing funds  
9 made available to the department under the Public Works and  
10 Economic Development Act of 1965 (Public Law 89-136, 42 U.S.C. §  
11 3121 et seq.).

12       "Ex-Im Bank." The Export-Import Bank of the United States.

13       "Export activity." An activity undertaken by a person within  
14 this Commonwealth related to exports.

15       "Export business." A person that is engaged in a for-profit  
16 enterprise involving export activities and that employs 250 or  
17 fewer individuals.

18       "Exports." Goods or services to be sold or performed outside  
19 the United States.

20       "Farm commodity." Any Pennsylvania-grown agricultural,  
21 horticultural, aquacultural, vegetable, fruit and floricultural  
22 product of the soil, livestock and meats, wools, hides, furs,  
23 poultry, eggs, dairy products, nuts, mushrooms, honey products  
24 and forest products.

25       "Fund." The Small Business First Fund continued under  
26 section 2304 (relating to fund and accounts).

27       "Hazardous substance." Any element, compound or material  
28 which is any of the following:

29           (1) Regulated as a hazardous air pollutant under section  
30 6.6 of the act of January 8, 1960 (1959 P.L.2119, No.787),

1 known as the Air Pollution Control Act.

2 (2) Defined as a hazardous waste under section 103 of  
3 the act of July 7, 1980 (P.L.380, No.97), known as the Solid  
4 Waste Management Act.

5 (3) Regulated under the act of December 7, 1990  
6 (P.L.639, No.165), known as the Hazardous Material Emergency  
7 Planning and Response Act.

8 "Hospitality industry project." A for-profit project or  
9 venture which involves a small business that operates a hotel,  
10 motel or other lodging facility and that employs at least five  
11 full-time equivalent employees at the time an application is  
12 submitted to the department for financing. The term includes a  
13 for-profit project or venture which involves a small business  
14 that operates a restaurant or food service operation open to the  
15 public, that has been in continuous operation for at least five  
16 years and that employs at least five full-time equivalent  
17 employees at the time an application is submitted.

18 "Insurance policy." An export credit insurance policy for  
19 small businesses offered by the Export-Import Bank of the United  
20 States.

21 "Natural disaster." As defined in 35 Pa.C.S. § 7102  
22 (relating to definitions).

23 "Normal agricultural operation." As defined in section 2 of  
24 the act of June 10, 1982 (P.L.454, No.133), entitled "An act  
25 protecting agricultural operations from nuisance suits and  
26 ordinances under certain circumstances."

27 "Pollution prevention." The reduction or elimination of  
28 pollution at its source. The term does not include any of the  
29 following:

30 (1) A substitution of one hazardous or toxic substance

1 for another which will cause an increased risk to the  
2 environment or to human health.

3 (2) A cross-media transfer.

4 (3) A delisting of a hazardous waste or toxic chemical.

5 "Pollution prevention assistance agency." Any of the  
6 following:

7 (1) An area loan organization.

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

11 "Pollution prevention infrastructure." A capital development  
12 project which permits a small business to adopt or install  
13 pollution prevention equipment or processes to:

14 (1) Reduce or reuse raw materials onsite.

15 (2) Reduce the production of waste.

16 (3) Reduce energy consumption.

17 "Program." The Small Business First Program established  
18 under section 2303 (relating to establishment).

19 "Reuse." Use of a product or component in its original form  
20 more than once.

21 "Small business." A person that is engaged in a for-profit  
22 enterprise and that employs 100 or fewer individuals. The term  
23 includes the following:

24 (1) An enterprise located in a small business incubator  
25 facility.

26 (2) An agricultural processor.

27 (3) An agricultural producer.

28 (4) An enterprise which manufactures apparel products.

29 (5) An enterprise which is a for-profit or not-for-  
30 profit child day-care center subject to licensure by the

1 Commonwealth.

2 "Working capital." Capital used by a small business for  
3 operations, excluding fixed assets and production machinery and  
4 equipment.

5 § 2303. Establishment.

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

11 § 2304. Fund and accounts.

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

16 (1) Appropriations made by the General Assembly to the  
17 department for the program.

18 (2) Federal funds made available under the Public Works  
19 and Economic Development Act of 1965 (Public Law 89-136, 42  
20 U.S.C. § 3121 et seq.) or any other Federal statute,  
21 regulation or program for the program.

22 (3) Payments from recipients of loans made from the  
23 fund.

24 (4) Payments from recipients of loans made under the  
25 former act of July 2, 1984 (P.L.545, No.109), known as the  
26 Capital Loan Fund Act.

27 (5) Interest income derived from investment of the money  
28 in the fund.

29 (6) Any other deposits, payments or contributions from  
30 any other source made available to the department for the



1 program.

2 (b) Pollution prevention assistance.--The Pollution  
3 Prevention Assistance Account, created under the act of June 29,  
4 1996 (P.L.434, No.67), known as the Job Enhancement Act, is  
5 continued. The Treasury Department shall credit the following to  
6 this account:

7 (1) Appropriations made by the General Assembly to the  
8 department for pollution prevention assistance.

9 (2) Payments from recipients of loans made from the  
10 Pollution Prevention Assistance Account.

11 (3) Transfers from the Hazardous Sites Cleanup Fund as  
12 established in section 602.3 of the act of March 4, 1971  
13 (P.L.6, No.2), known as the Tax Reform Code of 1971.

14 (4) Interest income derived from investment of the money  
15 in the Pollution Prevention Assistance Account.

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

19 (c) Use of fund.--

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

21 (i) By the department to make loans in accordance  
22 with this chapter and for administrative costs of the  
23 department in administering the program.

24 (ii) By area loan organizations for administrative  
25 costs associated with the program which are approved by  
26 the department.

27 (2) Money from the fund derived from appropriations  
28 specified for export financing assistance may be deposited by  
29 the department in banks or trust companies in special  
30 accounts. The special accounts must be continuously secured

1 by a pledge of direct obligations of the United States or of  
2 the Commonwealth having an aggregate market value, exclusive  
3 of accrued interest, at least equal to the balance on deposit  
4 in the account. The securities shall be deposited with the  
5 department to be held by a trustee or agent satisfactory to  
6 the department. Banks and trust companies are authorized to  
7 give security under this paragraph. Money in these special  
8 accounts shall be paid out on order of the department.

9 (d) Use of Pollution Prevention Assistance Account.--Money  
10 in the Pollution Prevention Assistance Account may be used by  
11 the department to provide loans to small businesses for the  
12 adoption or installation of pollution-prevention or energy-  
13 efficient equipment or processes in accordance with section 2309  
14 (relating to pollution prevention assistance loans).  
15 § 2305. Department responsibilities.

16 (a) General rule.--The department shall do all of the  
17 following:

18 (1) Administer the program.

19 (2) Establish written guidelines as necessary. Any  
20 guidelines established shall be included in the report  
21 required by Chapter 3 (relating to economic development  
22 financing strategy).

23 (3) Deposit payments made by recipients in the fund or  
24 the Pollution Prevention Assistance Account, as appropriate.

25 (4) Approve standards for area loan organization  
26 application fees.

27 (5) Approve community development financial  
28 institutions.

29 (b) Program.--In administering the program, the department  
30 may do any of the following:

1 (1) Provide grants or other financial assistance to area  
2 loan organizations for any of the following purposes:

3 (i) To establish loan reserve funds.

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

8 (2) Apply to the Ex-Im Bank for delegated authority  
9 lender status under the Ex-Im Bank's Working Capital Guaranty  
10 Program.

11 (3) Utilize the outstanding portfolio of loans made  
12 under this chapter to raise additional funds by selling,  
13 securing, hypothecating or otherwise using such loan proceeds  
14 as a financing vehicle if the funds raised are used by the  
15 department for either of the following purposes:

16 (i) To make new and additional loans under this  
17 chapter.

18 (ii) To pay costs associated with financing.

19 § 2306. Capital development loans.

20 (a) Application.--A small business may submit an application  
21 and any applicable application fee to its area loan organization  
22 requesting a loan for certain costs of a capital development  
23 project. The application shall be on the form required by the  
24 department and shall include or demonstrate all of the  
25 following:

26 (1) The name and address of the applicant.

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

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

30 (4) A financial commitment from a responsible source for

1 any cost of the capital development project in excess of the  
2 amount requested.

3 (5) Any other information required by the department.

4 (b) Area loan organization review.--

5 (1) Upon receipt of a completed application, an area  
6 loan organization shall investigate and determine all of the  
7 following:

8 (i) If the applicant is a small business.

9 (ii) If the project is a capital development  
10 project.

11 (iii) If, when the applicant is a small business,  
12 the capital development project demonstrates a  
13 substantial likelihood of creating or preserving  
14 employment activities in this Commonwealth or if, when  
15 the applicant is an agricultural producer, the project  
16 demonstrates a substantial likelihood of enhancing and  
17 growing normal agriculture operations.

18 (iv) The ability of the applicant to meet and  
19 satisfy the debt service as it becomes due and payable.

20 (v) The existence and sufficiency of collateral for  
21 the loan.

22 (vi) Relevant criminal and credit history and  
23 ratings of the applicant as determined from outside  
24 credit reporting services and other sources.

25 (vii) The number of employment opportunities to be  
26 created or preserved by the proposed capital development  
27 project.

28 (viii) If the applicant complied with all other  
29 criteria established by the department.

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

1 met, the area loan organizations shall recommend the  
2 applicant to the department and forward the application with  
3 all supporting documentation to the department for its review  
4 and approval.

5 (c) Department review.--

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

11 (i) A loan for land, buildings and machinery and  
12 equipment may not exceed \$200,000 or 50% of the total  
13 capital development project costs, whichever is less. For  
14 the purposes of this subparagraph, capital development  
15 project costs incurred during the 12-month period prior  
16 to the date of submission of the application to the  
17 department shall be considered part of the total capital  
18 development project costs.

19 (ii) A loan for working capital may not exceed  
20 \$100,000 or 50% of the total capital development project  
21 costs, whichever is less.

22 (iii) Except for loans to agricultural producers, a  
23 loan must create or preserve one job for every \$25,000  
24 loaned.

25 (2) The department shall notify the area loan  
26 organization and applicant of its decision.

27 (d) Approvals.--For applications which are approved, the  
28 department shall draw an advance equal to the principal amount  
29 of the loan from the fund. The advance shall be forwarded to the  
30 area loan organization and, upon receipt by the area loan

1 organization, shall become an obligation of the area loan  
2 organization. Prior to providing loan funds to the applicant,  
3 the area loan organization shall require the applicant to  
4 execute a note and to enter into a loan agreement. In addition  
5 to the requirements of subsection (e), the loan agreement shall  
6 include a provision requiring the recipient to use the loan  
7 proceeds to pay the costs of the capital development project.  
8 The department may require the area loan organization to impose  
9 other terms and conditions on the recipient if the department  
10 determines that they are in the best interests of this  
11 Commonwealth, including a provision requiring collateral for any  
12 penalty imposed under subsection (g).

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

15 (1) State the collateral securing the loan. All loans  
16 shall be secured by lien positions on collateral at the  
17 highest level of priority as may be determined by the area  
18 loan organization with the approval of the department.

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

21 (i) A loan for real property shall have a repayment  
22 period of up to 15 years.

23 (ii) A loan for machinery and equipment shall have a  
24 repayment period of up to ten years.

25 (iii) A loan for working capital shall have a  
26 repayment period of up to three years.

27 (iv) If, in a capital development project, there are  
28 two or more uses planned, the loan terms may be blended.

29 (3) State the interest rate in accordance with the  
30 following:

1           (i) Except as provided in subparagraph (ii), loans  
2 shall be made at an interest rate not to exceed 5% for  
3 the term of the loan.

4           (ii) A loan to a small business which is an  
5 agricultural producer shall be made at an interest rate  
6 of not less than 2% for the term of the loan if all of  
7 the following apply:

8           (A) A declaration under 35 Pa.C.S. § 7301(c)  
9 (relating to general authority of Governor) is in  
10 effect for at least ten days prior to the date of  
11 application.

12           (B) The application is made within nine months  
13 of termination of the declaration.

14           (C) The agricultural producer is in the area  
15 which has been declared to be a natural disaster  
16 area.

17       (f) Loan administration.--A loan made under this section  
18 shall be administered in accordance with departmental policies  
19 and procedures by the area loan organization which made the  
20 loan. Each area loan organization shall submit an annual report  
21 on the form required by the department and which includes or  
22 demonstrates all of the following:

23           (1) Each outstanding loan.

24           (2) The date approved.

25           (3) The original principal amount.

26           (4) The current principal balance.

27           (5) The interest rate.

28           (6) The purpose for which the loan was made.

29           (7) An enumeration of any problems or issues which have  
30 arisen with regard to each loan.

1           (8) A statement regarding the progress of the small  
2 business in creating or preserving its requisite number of  
3 employment opportunities.

4           (9) Any other information or documentation required by  
5 the department.

6           (g) Penalty.--

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

11           (2) The department may waive the penalty required by  
12 paragraph (1) if the department determines that the failure  
13 was due to circumstances outside the control of the  
14 recipient.

15           (3) The amount of the penalty imposed under paragraph  
16 (1) shall be equal to an increase in the interest rate to 2%  
17 greater than the current prime interest rate for the  
18 remainder of the loan.

19           (h) Defaults.--The department may by foreclosure take title  
20 to a capital development project which it financed if  
21 acquisition is necessary to protect a loan made under this  
22 section. The department shall pay all costs arising out of the  
23 foreclosure and acquisition from moneys held in the fund. The  
24 department may, in order to minimize financial losses and  
25 sustain employment, lease the capital development project. The  
26 department may withdraw moneys from the fund to purchase first  
27 mortgages and to make payments on first mortgages on any capital  
28 development project which it financed where purchase or payment  
29 is necessary to protect a loan made under this section. The  
30 department may sell, transfer, convey and assign the first



1 mortgages and shall deposit any moneys derived from the sale of  
2 any first mortgages in the fund.

3 § 2307. EDA loans.

4 (a) Application and administration procedures.--The  
5 department shall establish application and administration  
6 procedures to be used for EDA loans. The procedures shall be  
7 established by guidelines and shall conform in all respects to  
8 those procedures required or established by the Economic  
9 Development Administration for use of Federal funds under the  
10 Public Works and Economic Development Act of 1965 (Public Law  
11 89-136, 42 U.S.C. § 3121 et seq.).

12 (b) Eligibility for EDA loans.--The department shall  
13 establish eligibility requirements to be used for EDA loans. The  
14 requirements shall be established by guidelines and shall  
15 conform in all respects to those procedures required or  
16 established by the Economic Development Administration for use  
17 of Federal funds under the Public Works and Economic Development  
18 Act of 1965.

19 § 2308. Loans in distressed communities.

20 (a) Application.--A small business located in a distressed  
21 community may submit an application and any applicable  
22 application fee to a community development institution  
23 requesting a loan for certain costs of a capital development  
24 project. The application shall be on the form required by the  
25 department and shall include or demonstrate all of the  
26 following:

27 (1) The name and address of the applicant.

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

1 (3) A statement of the amount of loan assistance sought.

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

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

7 (6) Any other information required by the department.

8 (b) Community development institution review.--

9 (1) Upon receipt of a completed application, a community  
10 development institution shall investigate and determine all  
11 of the following:

12 (i) If the applicant is a small business which is  
13 engaged in business-to-public service or in the  
14 mercantile, commercial or point-of-sale retail business  
15 sectors in accordance with conditions or criteria  
16 established by the department.

17 (ii) If the project is a capital development  
18 project.

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

25 (iv) Number of employment opportunities to be  
26 created or preserved by the proposed capital development  
27 project.

28 (v) If the applicant complied with all other  
29 criteria established by the department.

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

1 met, the community development institution shall recommend  
2 the applicant to the department and forward the application  
3 with all supporting documentation to the department for its  
4 review and approval.

5 (c) Department review.--

6 (1) Upon receipt of a recommendation and a completed  
7 application, the department shall investigate and determine  
8 all of the following:

9 (i) The ability of the applicant to meet and satisfy  
10 the debt service as it becomes due and payable. In  
11 reviewing repayment obligations, loans shall not be  
12 approved on the basis of direct financial return on  
13 investment and shall not be held to the loan loss  
14 standards of private commercial lenders. Loans shall be  
15 reviewed for the purpose of establishing a strong  
16 economic base and promoting entrepreneurial activity  
17 within the distressed community.

18 (ii) The existence and sufficiency of collateral for  
19 the loan.

20 (iii) Relevant criminal and credit history and  
21 ratings of the applicant as determined from outside  
22 credit reporting services and other sources.

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

1 total capital development project costs.

2 (3) The department shall notify the community  
3 development institution and applicant of its decision.

4 (d) Approvals.--For applications which are approved, the  
5 department shall draw an advance equal to the principal amount  
6 of the loan from the fund and, prior to providing loan funds to  
7 the applicant, the department shall require the applicant to  
8 execute a note and to enter into a loan agreement. In addition  
9 to the requirements of subsection (e), the loan agreement shall  
10 include a provision requiring the recipient to use the loan  
11 proceeds to pay the costs of the capital development project.  
12 The department may impose other terms and conditions on the  
13 recipient if the department determines they are in the best  
14 interests of this Commonwealth, including a provision requiring  
15 collateral for any penalty imposed under subsection (g).

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

18 (1) State any collateral securing the loan. The  
19 department may use its best judgment to identify and secure  
20 collateral.

21 (2) State the repayment period which may be flexible.

22 (3) State the interest rate which may not be less than  
23 2% nor more than 5% for the term of the loan.

24 (4) State that the recipient agrees to maintain, at a  
25 minimum, the number of jobs in existence as of the date of  
26 loan application.

27 (f) Loan administration.--A loan made under this section  
28 shall be administered in accordance with departmental policies  
29 and procedures.

30 (g) Penalty.--

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

5           (2) The department may waive the penalty required by  
6 paragraph (1) if the department determines that the failure  
7 was due to circumstances outside the control of the  
8 recipient.

9           (3) The amount of any penalty imposed under paragraph  
10 (1) shall be equal to an increase in the interest rate to 2%  
11 greater than the current prime interest rate for the  
12 remainder of the loan.

13       (h) Defaults.--The department may take title by foreclosure  
14 to a capital development project which it financed where  
15 acquisition is necessary to protect a loan made under this  
16 section. The department shall pay all costs arising out of the  
17 foreclosure and acquisition from money held in the fund. The  
18 department may, in order to minimize financial losses and  
19 sustain employment, lease the capital development project. The  
20 department may withdraw money from the fund to purchase first  
21 mortgages and to make payments on first mortgages on any capital  
22 development project which it financed if purchase or payment is  
23 necessary to protect a loan made under this section. The  
24 department may sell, transfer, convey and assign the first  
25 mortgages and shall deposit in the fund money derived from the  
26 sale of any first mortgages.

27 § 2309. Pollution prevention assistance loans.

28       (a) Application.--A small business may submit an application  
29 and any application fee to a pollution prevention assistance  
30 agency requesting a loan for a pollution prevention

1 infrastructure. The application shall be on the form required by  
2 the department and shall include or demonstrate all of the  
3 following:

4 (1) The name and address of the applicant.

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

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

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

12 (5) Any other information required by the department.

13 (b) Pollution prevention assistance agency review.--

14 (1) Upon receipt of a completed application, a pollution  
15 prevention assistance agency shall investigate and determine  
16 all of the following:

17 (i) If the applicant is a small business.

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

20 (iii) If the applicant complied with all other  
21 criteria established by the department.

22 (2) Upon being satisfied that all requirements have been  
23 met, the pollution prevention assistance agency shall  
24 recommend the applicant to the department and forward the  
25 application with all supporting documentation to the  
26 department for its review and approval.

27 (c) Department review.--

28 (1) Upon receipt of a recommendation and a completed  
29 application, the department shall investigate and determine  
30 all of the following:

1 (i) If the pollution prevention infrastructure  
2 demonstrates a substantial likelihood of preventing or  
3 reducing pollution. The Department of Environmental  
4 Protection shall assist the department in reviewing the  
5 applications and provide technical assistance.

6 (ii) The ability of the applicant to meet and  
7 satisfy the debt service as it becomes due and payable.  
8 In reviewing repayment obligations, loans shall not be  
9 approved on the basis of direct financial return on  
10 investment and shall not be held to the loan loss  
11 standards of private commercial lenders. Loans shall be  
12 reviewed for the purpose of reducing pollution through  
13 source reduction technologies or processes.

14 (iii) The existence and sufficiency of collateral  
15 for the loan.

16 (iv) Relevant criminal and credit history and  
17 ratings of the applicant as determined from outside  
18 credit reporting services and other sources.

19 (2) If the department is satisfied that all requirements  
20 have been met, the department may approve the loan request. A  
21 loan approved under this subsection may not exceed the lesser  
22 of:

23 (i) \$100,000; or

24 (ii) 75% of infrastructure costs.

25 (3) The department shall notify the pollution prevention  
26 assistance agency and applicant of its decision.

27 (d) Approvals.--For applications which are approved, the  
28 department shall draw an advance equal to the principal amount  
29 of the loan from the Pollution Prevention Assistance Account.  
30 Prior to providing loan funds to the applicant, the department

1 shall require the applicant to execute a note and to enter into  
2 a loan agreement. In addition to the requirements of subsection  
3 (e), the loan agreement shall include a provision requiring the  
4 recipient to use the loan proceeds to pay the costs of the  
5 pollution prevention infrastructure. The department may impose  
6 other terms and conditions on the recipient if the department  
7 determines they are in the best interests of this Commonwealth,  
8 including a provision requiring collateral for any penalty  
9 imposed under subsection (g).

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

12 (1) State the collateral securing the loan. All loans  
13 shall be secured by lien positions on collateral at the  
14 highest level of priority as may be determined by the  
15 department.

16 (2) State the repayment period which may not exceed 10  
17 years.

18 (3) State that the interest rate is 2%.

19 (4) State that any loan fee is not to exceed 5% of the  
20 loan amount.

21 (f) Loan administration.--A loan made under this section  
22 shall be administered in accordance with departmental policies  
23 and procedures.

24 (g) Penalty.--

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

29 (2) The department may waive the penalty required by  
30 paragraph (1) if the department determines that the failure



1 was due to circumstances outside the control of the  
2 recipient.

3 (3) The amount of any penalty imposed under paragraph  
4 (1) shall be equal to an increase in the interest rate to 2%  
5 greater than the current prime interest rate for the  
6 remainder of the loan.

7 (h) Defaults.--The department may take title by foreclosure  
8 to a pollution prevention infrastructure which it financed if  
9 acquisition is necessary to protect a loan made under this  
10 section. The department shall pay all costs arising out of the  
11 foreclosure and acquisition from money held in the Pollution  
12 Prevention Assistance Account. The department may, in order to  
13 minimize financial losses and sustain employment, lease the  
14 pollution prevention infrastructure. The department may withdraw  
15 money from the Pollution Prevention Assistance Account to  
16 purchase first mortgages and to make payments on first mortgages  
17 on any pollution prevention infrastructure which it financed if  
18 the purchase or payment is necessary to protect a loan made  
19 under this section. The department may sell, transfer, convey  
20 and assign the first mortgages and shall deposit any money  
21 derived from the sale of any first mortgages in the Pollution  
22 Prevention Assistance Account.

23 § 2310. Export financing loans.

24 (a) Application.--A person may submit an application and any  
25 applicable application fee to the department or its area loan  
26 organization requesting a loan for certain costs of a capital  
27 development project which will be used in export activities. The  
28 application must be on the form required by the department and  
29 must include or demonstrate all of the following:

30 (1) The name and address of the applicant.

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

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

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

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

10 (6) Any other information required by the department.

11 (b) Review.--Upon receipt of a completed application, the  
12 department shall investigate and determine all of the following:

13 (1) If the applicant is an export business.

14 (2) If the project is a capital development project.

15 (3) The ability of the applicant to meet and satisfy the  
16 debt service as it becomes due and payable.

17 (4) The existence and sufficiency of collateral for the  
18 loan.

19 (5) Relevant criminal and credit history and ratings of  
20 the applicant as determined from outside credit reporting  
21 services and other sources.

22 (6) Number of employment opportunities to be created or  
23 preserved by the proposed capital development project.

24 (7) If the applicant complied with all other criteria  
25 established by the department.

26 (c) Approvals.--If the department is satisfied that all  
27 requirements have been met, the department may approve the loan  
28 request. A loan approved under this section may not exceed  
29 \$350,000. The department shall notify the applicant and, if  
30 applicable, the area loan organization of its decision. The

1 department shall reserve an amount equal to the principal amount  
2 of the loan within the fund or the special account authorized by  
3 section 2304(c)(2) (relating to fund and accounts). Prior to  
4 providing funds to the applicant, the department shall require  
5 the applicant to execute a note and enter into a loan agreement.  
6 In addition to the requirements of subsection (d), the loan  
7 agreement shall include a provision requiring the recipient to  
8 use the loan proceeds to pay the costs of the capital  
9 development project. The department may impose other terms and  
10 conditions on the recipient if the department determines they  
11 are in the best interests of this Commonwealth, including any of  
12 the following:

13 (1) A provision requiring collateral for any penalty  
14 imposed under subsection (f).

15 (2) A provision requiring the person to be eligible for  
16 an insurance policy.

17 (3) A provision requiring the loan to be guaranteed by  
18 the Working Capital Guaranty Program offered by the Ex-Im  
19 Bank.

20 (4) A provision requiring an export credit sales  
21 contract insured by an insurance policy.

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

24 (1) State the collateral securing the loan. All loans  
25 shall be secured by lien positions on collateral at the  
26 highest level of priority as may be determined by the  
27 department.

28 (2) State the repayment period as determined by the  
29 department.

30 (3) State the interest rate as determined by the

1 department.

2 (e) Loan administration.--A loan made under this section  
3 shall be administered in accordance with departmental policies  
4 and procedures.

5 (f) Penalty.--

6 (1) Except as provided in paragraph (2), the department  
7 shall impose a penalty upon a recipient if the recipient  
8 fails to carry out the export activities specified in its  
9 approved application.

10 (2) The department may waive the penalty required by  
11 paragraph (1) if the department determines that the failure  
12 was due to circumstances outside the control of the  
13 recipient.

14 (3) The amount of the penalty imposed under paragraph  
15 (1) shall be equal to an increase in the interest rate to 2%  
16 greater than the current prime interest rate for the  
17 remainder of the loan.

18 (g) Defaults.--The department may, by foreclosure, take  
19 title to a capital development project which it financed if  
20 acquisition is necessary to protect a loan made under this  
21 section. The department shall pay all costs arising out of the  
22 foreclosure and acquisition from money held in the fund or a  
23 special account authorized by section 2304(c)(2). The department  
24 may, in order to minimize financial losses and sustain  
25 employment, lease the capital development project. The  
26 department may withdraw money from the fund or a special account  
27 authorized by section 2304(c)(2) to purchase first mortgages and  
28 to make payments on first mortgages on any capital development  
29 project which it financed if purchase or payment is necessary to  
30 protect a loan made under this section. The department may sell,

1 transfer, convey and assign the first mortgages and shall  
2 deposit any money derived from the sale of any first mortgages  
3 in the fund or a special account authorized by section 2304(c)  
4 (2).

5 § 2311. Reporting and inspection.

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

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

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

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

22 § 2312. Limitations.

23 No loans shall be recommended or approved if the proceeds of  
24 the loan could do any of the following:

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

29 (2) Refinance any portion of the total cost of a capital  
30 development project, pollution prevention infrastructure or

1 other existing loans or debt.

2 (3) Finance a capital development project or pollution  
3 prevention infrastructure located outside the geographic  
4 boundaries of this Commonwealth.

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

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

11 CHAPTER 29

12 MACHINERY AND EQUIPMENT LOANS

13  
14 Sec.

15 2901. Scope.

16 2902. Definitions.

17 2903. Establishment.

18 2904. Machinery and Equipment Loan Fund.

19 2905. Eligibility for loans; terms and conditions.

20 2906. Application and administration.

21 2907. Powers of secretary.

22 2908. Reporting and inspection.

23 2909. Nondiscrimination.

24 2910. Conflict of interest.

25 2911. Reports to General Assembly.

26 2912. Guidelines.

27 § 2901. Scope.

28 This chapter relates to the Machinery and Equipment Loan  
29 Program.

30 § 2902. Definitions.

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

4 "Business enterprise." A for-profit corporation, partnership  
5 or proprietorship. The term includes a medical facility.

6 "Farm commodity." Any Pennsylvania-grown agricultural,  
7 horticultural, aquacultural, vegetable, fruit and floricultural  
8 product of the soil, livestock and meats, wools, hides, furs,  
9 poultry, eggs, dairy products, nuts, mushrooms, honey products  
10 and forest products.

11 "Fund." The Machinery and Equipment Loan Fund created and  
12 established by this chapter.

13 "Medical facility." An entity licensed as a hospital under  
14 the act of June 13, 1967 (P.L.31, No.21), known as the Public  
15 Welfare Code, or the act of July 19, 1979 (P.L.130, No.48),  
16 known as the Health Care Facilities Act.

17 "Normal agricultural operation." The term shall have the  
18 same meaning as given to it in section 2 of the act of June 10,  
19 1982 (P.L.454, No.133), entitled "An act protecting agricultural  
20 operations from nuisance suits and ordinances under certain  
21 circumstances."

22 "Production agriculture." The management and use of a normal  
23 agricultural operation for the production of a farm commodity.

24 § 2903. Establishment.

25 There is established within the department a program to be  
26 known as the Machinery and Equipment Loan Program. The program  
27 shall be administered by the department and provide loans to  
28 business enterprises for machinery and equipment.

29 § 2904. Machinery and Equipment Loan Fund.

30 (a) Creation.--There is created a special account in the

1 Treasury Department, to be known as the Machinery and Equipment  
2 Loan Fund, to which shall be credited all program appropriations  
3 made by the General Assembly, all proceeds from loan repayments  
4 and any and all other deposits, payments or contributions from  
5 any other source made available to the fund. The fund shall  
6 operate as a revolving fund whereby all appropriations, payments  
7 and interest made thereto may be applied and reapplied to the  
8 purposes of this chapter.

9 (b) Credits to fund.--All appropriations, deposits and  
10 contributions made to the fund shall be immediately credited in  
11 full to the fund, and earnings on the moneys held in the fund  
12 shall also be credited to the fund for the purposes of this  
13 chapter.

14 § 2905. Eligibility for loans; terms and conditions.

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

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

27 (i) Be made to eligible business enterprises under  
28 the provisions of this chapter.

29 (ii) Have a maximum loan ceiling of \$5,000,000 or  
30 50% of the cost of the project, whichever is less.



1 (iii) Be limited to the purchase and installation of  
2 new equipment and machinery or the upgrade of existing  
3 machinery and equipment. This subparagraph includes the  
4 acquisition, application and utilization of computer  
5 hardware and software.

6 (iv) Be limited to projects that demonstrate the  
7 creation or retention of one job for every \$25,000  
8 received from the fund. This subparagraph does not apply  
9 to loans made to business enterprises involved in  
10 production agriculture or to loans made to medical  
11 facilities.

12 (v) Have an interest rate which shall be established  
13 by the secretary.

14 (vi) Have a term of not in excess of ten years.

15 (2) For loans to medical facilities, loan funds may be  
16 used only to finance the acquisition, installation and  
17 utilization of machinery and equipment, including computer  
18 hardware and software components, to be used in the  
19 prescribing and dispensing of medication for medical facility  
20 patients.

21 (b) Restrictions.--No loans shall be made that do any of the  
22 following:

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

27 (2) Supplant funding that is otherwise available  
28 expeditiously from private sector sources on commercially  
29 reasonable terms.

30 (3) Be for the purpose of refinancing any portion of the

1 total project cost or other existing loans or debt.

2 (4) Be for the purpose of financing projects located  
3 outside the geographic boundaries of this Commonwealth.

4 (5) Be for the purpose of paying off a creditor that is  
5 inadequately secured and is in a position to sustain a loss.

6 (6) Be for the purpose of repaying a debt owed to a  
7 small business investment company.

8 (7) Provide funds for speculation in any kind of  
9 property, real or personal, tangible or intangible.

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

13 § 2906. Application and administration.

14 (a) Procedures.--Application and administration procedures  
15 for fund loans shall be established by the secretary.

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

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

25 (1) Ability of the applicant to meet and satisfy all  
26 debt service as it becomes due and payable.

27 (2) Sufficiency of available collateral, including  
28 satisfactory lien positions on real and personal property.

29 (3) Eligibility of the applicant as a business  
30 enterprise involved in industrial processes, manufacturing,

1 mining, production agriculture, information technology,  
2 biotechnology, services as a medical facility or other  
3 industrial or technology sectors as defined by the secretary.

4 (4) Sufficient evidence that funds shall be used only to  
5 acquire and install new equipment and machinery or upgrade  
6 existing equipment and machinery, including the acquisition,  
7 application and utilization of computer hardware and  
8 software.

9 (5) Capital needs of the applicant.

10 (6) Conformity of the project to the provisions of this  
11 chapter.

12 (7) Relevant criminal and credit history and ratings of  
13 applicant as determined from outside credit reporting  
14 services and other sources.

15 (8) Number of net employment opportunities created and  
16 retained by the proposed project. This paragraph does not  
17 apply to business enterprises involved in production  
18 agriculture or medical facilities.

19 (9) Supporting evidence that the loan project will  
20 increase the firm's competitiveness and value added within  
21 its respective industry.

22 (10) Explanation of how the loan will aid the  
23 Commonwealth in its efforts to assist business enterprises to  
24 increase their productivity and improve the future  
25 competitive position of this Commonwealth's industries.

26 (11) Compliance with the loan amount limitations  
27 provided for machinery and equipment loans.

28 (12) Payment to date of all tax obligations due and  
29 owing to the Commonwealth or any political subdivision  
30 thereof.

1           (13) Conformity of all aspects of the loan transaction  
2 with the substantive and procedural provisions of this  
3 chapter and regulations promulgated hereunder.

4           (14) Such information and documentation as the secretary  
5 shall require.

6           (d) Notification.--The secretary shall notify the applicant  
7 of final approval or disapproval of the loan application within  
8 a reasonable period of time following the receipt of the  
9 application. In the case of approval of a loan application, the  
10 secretary shall arrange to draw the loan amount from the fund  
11 and advance the sum to the recipient. The advance shall be made  
12 available in the form of a loan transaction, which loan shall be  
13 evidenced by a note executed by the recipient and secured in a  
14 manner as the secretary shall require in conformity in all  
15 respects to the loan as approved by the secretary.

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

21           (1) Each outstanding loan.

22           (2) The date of approval.

23           (3) The original principal balance.

24           (4) The current principal balance.

25           (5) The interest rate.

26           (6) The purpose for which the loan was made.

27           (7) An enumeration of any problems or issues which have  
28 arisen with regard to each loan.

29           (8) A statement regarding the progress of the business  
30 enterprise in creating and retaining its requisite number of

1 employment opportunities.

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

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

14 § 2907. Powers of secretary.

15 The secretary shall have and may exercise all powers and  
16 authority necessary to the proper administration and  
17 implementation of this chapter and shall have the authority to  
18 adopt policies, procedures and guidelines and promulgate rules  
19 and regulations necessary to effectuate the provisions of this  
20 chapter.

21 § 2908. Reporting and inspection.

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

27 (b) Updating.--Each business enterprise shall update the  
28 information given to the department in its application if  
29 conditions change or to the extent that the information given  
30 originally becomes inaccurate or misleading.

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

5 § 2909. Nondiscrimination.

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

14 § 2910. Conflict of interest.

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

18 § 2911. Reports to General Assembly.

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

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

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

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

1 the aggregate.

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

5 (5) Other relevant information as determined by the  
6 secretary.

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

11 § 2912. Guidelines.

12 The department shall develop written guidelines for the  
13 implementation of this chapter.]

14 Section 2. Section 1542(b) of Title 64 is amended to read:  
15 § 1542. Revolving loan program accounts.

16 \* \* \*

17 [(b) The First Industries Program account.--The authority  
18 shall establish an account for the program established in  
19 section 1552 (relating to First Industries Program). Proceeds of  
20 bonds issued to fund the First Industries Program, any moneys  
21 received as loan repayments or in repayment or recovery of loan  
22 guarantees under the program, or moneys otherwise made available  
23 to the program, shall be deposited in the account and made  
24 available for additional planning grants or loans or used for  
25 additional loan guarantees as provided in section 1552, subject  
26 to the provisions of any pledge to or agreement made by the  
27 authority with obligees of the authority.]

28 Section 3. Section 1552 of Title 64 is repealed:

29 [§ 1552. First Industries Program.

30 (a) Establishment.--There is established a program to be

1 known as the First Industries Program. The program shall provide  
2 financial assistance for projects related to tourism and  
3 agriculture located within this Commonwealth. The board shall  
4 allocate funds made available to the program among the different  
5 methods of financing authorized in this section.

6 (b) Applications for planning grants.--An applicant may  
7 submit an application to the authority requesting a planning  
8 grant in an amount not to exceed \$250,000 for the costs of  
9 predevelopment activities and feasibility studies for a project  
10 related to tourism or agriculture. The application shall be on  
11 the form required by the board and shall include or demonstrate  
12 all of the following:

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

14 (2) The location of the project.

15 (3) A description of the project.

16 (4) An estimate of the cost of the predevelopment  
17 activities and feasibility studies and the goal to be  
18 achieved by carrying out the proposed activities or studies.

19 (5) A statement of the amount of the planning grant  
20 sought.

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

22 (c) Review and approval of planning grant applications.--

23 (1) The board shall review the application to determine  
24 that the project demonstrates one or more of the following:

25 (i) The project will have a demonstrable impact on  
26 the economy or well-being of the neighborhood, community  
27 or region where the project will be located.

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



1 (iii) The project will result in environmentally  
2 friendly or energy efficient operations related to  
3 agriculture, including projects authorized by the act of  
4 December 12, 1994 (P.L.888, No.128), known as the  
5 Agricultural By-Product Management Technology Act.

6 (iv) The project will result in more cost-effective  
7 and efficient marketing of regional assets related to  
8 tourism or agriculture.

9 (v) The project will result in a substantial  
10 increase in revenues for the Commonwealth or the host  
11 municipality.

12 (vi) The project proposes to utilize Commonwealth-  
13 owned natural resources for public/private development of  
14 tourism.

15 (2) Upon being satisfied that the requirements of  
16 paragraph (1) have been met, the board may approve the  
17 application, and, if approved, the authority shall award a  
18 planning grant.

19 (3) Copies of all reports and studies prepared with  
20 planning grant funds shall be filed with the authority and  
21 shall be made available to any person upon request.

22 (d) Loans to applicants.--If the department approves an  
23 application for a loan under the programs established in 12  
24 Pa.C.S. Ch. 23 (relating to small business first) or 29  
25 (relating to machinery and equipment loans), the department may  
26 request that the authority finance the loan. Upon being  
27 satisfied that the project is related to agriculture or tourism,  
28 the board may approve the request, and, if approved, the  
29 authority shall award a loan. Loans made under this subsection  
30 shall be administered by the department. Payments received shall

1 be forwarded to the authority and credited to the account  
2 established in accordance with section 1542(b) (relating to  
3 revolving loan program accounts).

4 (e) Loan guarantees.--

5 (1) An applicant may request a guarantee for a loan to  
6 be made by a commercial lending institution or community  
7 development financial institution to assist with the  
8 financing of a project related to tourism or agriculture. The  
9 applicant may be the commercial lending institution or  
10 community development financial institution applying on  
11 behalf of a borrower. The application must be on the form  
12 required by the board and must include or demonstrate all of  
13 the following:

14 (i) The applicant's name and address. If the  
15 applicant is a commercial lending institution or  
16 community development financial institution, the  
17 borrower's name and address.

18 (ii) A description of the project.

19 (iii) A statement describing the anticipated  
20 economic impact to the Commonwealth and the host  
21 municipality as a result of the project.

22 (iv) A description of the proposed project  
23 financing, including terms, conditions and the collateral  
24 or security required for the loan for which the guarantee  
25 is being requested.

26 (v) A copy of the applicant's last two years of  
27 financial statements prepared or reported on by an  
28 independent certified public accountant. If the applicant  
29 is a commercial lending institution or a community  
30 development financial institution, a copy of the

1 borrower's last two years of financial statements  
2 prepared or reported on by an independent certified  
3 public accountant.

4 (vi) The amount of the loan guarantee that is being  
5 requested.

6 (vii) The total project cost and the identification  
7 of all sources of capital for the project.

8 (viii) Any other information required by the board.

9 (2) The board shall review the application to determine  
10 all of the following:

11 (i) (A) Except as set forth in clause (B), that the  
12 project has been awarded a planning grant under this  
13 section or that at least \$1,000,000 of private funds  
14 are being invested in the project.

15 (B) Beginning on the effective date of this  
16 paragraph through July 15, 2015, that the project has  
17 been awarded a planning grant under this section or  
18 that at least \$500,000 of private funds are being  
19 invested in the project.

20 (ii) That the value of the proposed collateral is  
21 sufficient to cover the full amount of the loan.

22 (iii) That 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 guarantee, and, if approved,  
26 the authority shall execute a guarantee agreement in favor of  
27 the commercial lending institution or community development  
28 financial institution stating the terms and amounts of the  
29 guarantee. Except as provided in paragraph (3.1), the  
30 guarantee may not exceed 50% of the outstanding principal

1 amount of the loan or \$2,500,000 at any point in time,  
2 whichever is less. In addition to any other terms and  
3 conditions required by the board, the guarantee agreement  
4 shall provide for all of the following:

5 (i) The procedure for the submission by the  
6 commercial lending institution or community development  
7 financial institution of a claim for payment. This  
8 procedure shall require that the commercial lending  
9 institution or community development financial  
10 institution demonstrate that it has exhausted all  
11 available remedies against the borrower, other guarantors  
12 and collateral before seeking payment under the  
13 agreement.

14 (ii) A requirement that a percentage of any moneys  
15 recovered subsequent to the payment of a claim by the  
16 authority be remitted to the authority.

17 (iii) Periodic reporting requirements by the  
18 commercial lending institution or community development  
19 financial institution regarding itself and regarding the  
20 loans which have been awarded guarantees under this  
21 section.

22 (3.1) Beginning on the effective date of this paragraph  
23 through July 15, 2015, a guarantee of 51% to 90% of the  
24 principal amount of the loan to assist with the financing of  
25 a project related to agriculture may be awarded by the board.  
26 The guarantee shall be subject to a one-time fee of 2% of the  
27 amount of the loan multiplied by the percentage of the  
28 guarantee.

29 (3.2) The amount of a guarantee under this subsection,  
30 if any, shall be set at the discretion of the board based

1 upon its determination of the potential financial risk to the  
2 Commonwealth.

3 (4) The board may establish a subcommittee composed of  
4 one or more board members and department staff to supervise  
5 the progress of projects for which loan guarantees have been  
6 awarded under this section.

7 (e.1) Limitation.--A Farm Credit Institution under the Farm  
8 Credit Act of 1971 (Public Law 92-181, 85 Stat. 583) shall only  
9 be permitted to participate in the First Industries Program  
10 established under this section and may not participate in any  
11 other loan guarantee program established under this chapter.

12 (e.2) Sunset.--After July 15, 2015, no Farm Credit  
13 Institution under the Farm Credit Act of 1971 shall be eligible  
14 for any loan guarantees under this chapter.

15 (f) Limitations.--

16 (1) No more than \$10,000,000 of the funds available for  
17 the program authorized by this section may be used for  
18 planning grants awarded under subsection (c).

19 (2) At least two-thirds of the funds available for the  
20 program authorized by this section shall be used for  
21 financing of projects related to agriculture.]

22 Section 3.1. Section 1553 of Title 64 is repealed:

23 [§ 1553. Second Stage Loan Program.

24 (a) Establishment.--There is established a program to be  
25 known as the Second Stage Loan Program. The program shall  
26 provide loan guarantees to commercial lending institutions that  
27 make loans to life sciences, advanced technology or  
28 manufacturing businesses.

29 (b) Application for enrollment.--A commercial lending  
30 institution may apply for enrollment in the program authorized

1 by this section. The application shall be on the form prescribed  
2 by the board and shall include or demonstrate all of the  
3 following:

4 (1) The name and address of the commercial lending  
5 institution and the name and title of the individual who will  
6 serve as the point of contact for the commercial lending  
7 institution.

8 (2) A statement defining the service area of the  
9 commercial lending institution.

10 (3) A statement describing the commercial lending  
11 activities engaged in by the commercial lending institution  
12 and how the institution intends to expand those activities as  
13 a result of its participation in the program authorized by  
14 this section.

15 (4) Any other information required by the board.

16 (c) Enrollment approval.--Upon being satisfied that all  
17 requirements have been met, the board may enroll the commercial  
18 lending institution in the program authorized by this section,  
19 and, if enrolled, the authority shall execute a master guarantee  
20 agreement in favor of the commercial lending institution. In  
21 addition to any other terms and conditions required by the  
22 board, the master guarantee agreement shall provide for the  
23 following:

24 (1) The procedure for the submission of a claim for  
25 payment by the commercial lending institution. This procedure  
26 shall require that the commercial lending institution  
27 demonstrate that it has exhausted all available remedies  
28 against the borrower, other guarantors and collateral for the  
29 loan before seeking payment under the agreement.

30 (2) A requirement that a percentage of any moneys

1 recovered by the commercial lending institution subsequent to  
2 any payment made under the master guarantee agreement by the  
3 authority be remitted to the authority.

4 (3) Periodic reporting requirements by the commercial  
5 lending institution regarding itself and regarding the loans  
6 for which guarantee certificates have been issued under this  
7 section.

8 (d) Application for guarantee.--A commercial lending  
9 institution enrolled in the program authorized by this section  
10 may submit an application to the authority for the guarantee of  
11 a proposed loan. The application shall be on the form prescribed  
12 by the board and shall include or demonstrate all of the  
13 following:

14 (1) The name and address of the borrower, the type of  
15 business the borrower conducts, the location and age of the  
16 business and the names and addresses of the principals of the  
17 borrower.

18 (2) The number of projected new or retained employees of  
19 the borrower as a result of the loan.

20 (3) A copy of the borrower's last two years of financial  
21 statements prepared or reported on by an independent  
22 certified public accountant.

23 (4) A statement describing the purpose of the loan, the  
24 requested amount of the loan, a copy of the commercial  
25 lending institution's commitment letter and applicable credit  
26 underwriting that supports the repayment of the loan, as well  
27 as the collateral and other guarantees offered by the  
28 borrower to support the loan.

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

30 (e) Application review.--

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

3 (i) That the borrower owns and operates a life  
4 sciences, advanced technology or manufacturing business.

5 (ii) That the borrower's business has been in  
6 existence for at least two years but no more than seven  
7 years at the time of application.

8 (iii) That the borrower is financially responsible  
9 and has the ability to repay the loan.

10 (iv) That the use of loan proceeds by the borrower  
11 will result in jobs being created or retained within this  
12 Commonwealth.

13 (v) That the borrower's business is located within  
14 the commercial lending institution's service area and  
15 within this Commonwealth.

16 (vi) That the borrower and the commercial lending  
17 institution have met all other requirements established  
18 by the board.

19 (2) Upon being satisfied that all requirements have been  
20 met, the board may approve the guarantee, and, if approved,  
21 the authority shall issue a guarantee certificate for the  
22 loan to the commercial lending institution stating the terms  
23 and amount of the guarantee.

24 (3) The board may establish a subcommittee composed of  
25 one or more members of the board and staff of the department  
26 to review and approve applications for guarantees under this  
27 section.

28 (f) Limitations.--

29 (1) During the first two years of the term of a loan for  
30 which a guarantee certificate has been issued, the guarantee



1 may not exceed 50% of the outstanding principal amount of the  
2 loan. From the end of year two through either the end of year  
3 seven or the end of the term of the loan, whichever occurs  
4 first, the guarantee may not exceed 25% of the outstanding  
5 principal amount of the loan. The guarantee will terminate at  
6 the end of seven years.

7 (2) At no time may a guarantee exceed \$1,000,000 for any  
8 one loan.]

9 Section 4. Title 64 is amended by adding a chapter to read:

10 CHAPTER 17

11 PENNSYLVANIA BUSINESS

12 DEVELOPMENT AUTHORITY

13 Subchapter

14 A. General Provisions

15 B. Structure and Powers

16 C. Bonds

17 D. Accounts

18 E. Programs

19 F. Miscellaneous Provisions

20 SUBCHAPTER A

21 GENERAL PROVISIONS

22 Sec.

23 1701. Scope of chapter.

24 1702. Construction.

25 1703. Findings and declaration of policy.

26 1704. Definitions.

27 § 1701. Scope of chapter.

28 This chapter relates to the Pennsylvania Business Development  
29 Authority.

30 § 1702. Construction.

1 (a) General rule.--This chapter shall be prudently construed  
2 in order to effect the legislative and public purposes as set  
3 forth in this subchapter.

4 (b) Rights of obligees.--The provisions of this chapter  
5 providing for security, rights and remedies of obligees of the  
6 authority shall be prudently construed to achieve the public  
7 policy set forth in this subchapter.

8 (c) Limitation.--If a provision of this chapter is judged to  
9 be invalid by a court of competent jurisdiction, the order or  
10 judgment shall be confined in its operation to the controversy  
11 in which it was rendered and shall not affect or invalidate a  
12 remaining provision of this chapter.

13 § 1703. Findings and declaration of policy.

14 The General Assembly finds and declares as follows:

15 (1) Many existing businesses in this Commonwealth could  
16 expand and become more competitive if provided with  
17 additional sources of financing for modernization, expansion  
18 and other capital needs. This, in turn, could increase  
19 employment levels, which would help to develop a stable and  
20 healthy economy and revitalize communities, thereby improving  
21 the health, safety and general welfare of the citizens of  
22 this Commonwealth.

23 (2) A minimum level of unemployment and a maximum level  
24 of business opportunity can best be attained through the  
25 promotion, stimulation and revitalization of industrial,  
26 manufacturing, commercial, technological, agricultural and  
27 tourism activities in this Commonwealth. Through such  
28 efforts, the Commonwealth's competitiveness in the global and  
29 United States economies may be enhanced.

30 (3) The Commonwealth has developed a great number of

1 programs with the objective of furthering economic  
2 development within its borders. There have also been a  
3 correspondingly great number of boards and authorities to  
4 administer the various programs. While many of these economic  
5 development programs have been successful, others have fallen  
6 short.

7 (4) The economic health of our communities will improve  
8 and efficiency and transparency will increase by eliminating  
9 programs that have not worked for this Commonwealth,  
10 consolidating the management of the successful programs that  
11 remain and adding new programs as needed.

12 (5) The Pennsylvania Business Development Authority  
13 shall disburse the money for and administer the economic  
14 development programs encompassed in this chapter. It shall do  
15 so with the prudence, proficiency and transparency that the  
16 citizens of this Commonwealth expect, and will have as  
17 resources the expertise and administrative assistance of the  
18 Department of Community and Economic Development, as well as  
19 the other State agencies. Resources will be more accessible  
20 to businesses in this Commonwealth, citizens will be able to  
21 see where their tax dollars are being invested and the  
22 overall health of this Commonwealth's economy will improve,  
23 beginning in individual communities and spreading throughout  
24 this Commonwealth.

25 § 1704. Definitions.

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

29 "Agricultural processor." An entity that adds value by  
30 subjecting one or more farm commodities to a process of

1 manufacture, development or preparation for sale or a person  
2 that converts a farm product into a marketable form.

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

6 "Agriculture." Any of the following:

7 (1) the management and use of an agricultural operation  
8 for the production of a farm commodity;

9 (2) the sale of farm commodities at wholesale;

10 (3) the sale of farm commodities at retail by urban and  
11 rural supermarkets in underserved areas or farmers' markets;

12 (4) energy-related activities impacting production  
13 agriculture; or

14 (5) activities that implement best industry practices  
15 related to agricultural waste, agricultural waste products,  
16 agricultural by-products or fertilizer.

17 "Applicant." An eligible business or economic development  
18 organization that requests financial assistance from the  
19 Pennsylvania Business Development Authority.

20 "Authority." The Pennsylvania Business Development Authority  
21 established in section 1711 (relating to authority).

22 "Board." The board of the Pennsylvania Business Development  
23 Authority established in section 1712 (relating to board).

24 "Bonds." Except where otherwise provided, bonds, notes,  
25 instruments, refunding notes and bonds and other evidences of  
26 indebtedness or obligations which the Pennsylvania Business  
27 Development Authority is authorized to issue or assume under  
28 this chapter.

29 "Business." A corporation, partnership, sole proprietorship,  
30 limited liability company, business trust or other commercial

1 entity.

2 "Capital development project." The acquisition, development,  
3 construction, renovation or use of land, buildings, equipment  
4 and machinery and working capital by a business as part of:

5 (1) A for-profit venture not of a mercantile or service-  
6 related nature, except for hospitality industry projects.

7 (2) An effort to:

8 (i) comply with Federal or State environmental laws  
9 or regulations;

10 (ii) complete an approved remediation project; or

11 (iii) adopt generally acceptable pollution  
12 prevention practices.

13 (3) An effort to recycle municipal or commercial waste,  
14 or to use recycled municipal or commercial waste materials in  
15 manufacturing.

16 (4) A for-profit project or venture to manufacture  
17 products to be exported out of the United States, which will  
18 increase this Commonwealth's market share.

19 "Commercial lending activities." The making of loans and the  
20 provision of deposit services to business entities, except that  
21 a farm credit system institution under the Farm Credit Act of  
22 1971 (Public Law 92-181, 85 Stat. 583) need not offer deposit  
23 services to qualify as a provider of commercial lending  
24 activities under this chapter.

25 "Commercial lending institution." A federally chartered or  
26 State-chartered bank, savings bank, savings and loan association  
27 or farm credit system institution under the Farm Credit Act of  
28 1971 (Public Law 92-181, 85 Stat. 583) which has a satisfactory  
29 rating from its primary regulator and which is engaged in  
30 commercial lending activities. The institution must operate at

1 least one full-service branch for deposit gathering and lending  
2 located within this Commonwealth or be a farm credit system  
3 institution under the Farm Credit Act of 1971.

4 "Commonwealth agency." An agency, authority or other  
5 instrumentality of the Commonwealth.

6 "Community development financial institution." A community  
7 development financial institution certified in accordance with  
8 the Community Development Banking and Financial Institutions Act  
9 of 1994 (Public Law 103-325, 108 Stat. 2163).

10 "Comprehensive county plan" or "comprehensive municipal  
11 plan." The comprehensive plan adopted under applicable law by a  
12 county, municipality, city of the first class or city of the  
13 second class.

14 "Cost of the project" or "cost." Any of the following:

15 (1) Costs and expenses of acquisition of interests in  
16 land, infrastructure, buildings, structures, equipment,  
17 furnishings, fixtures and other tangible or intangible  
18 property.

19 (2) Costs and expenses of construction, reconstruction,  
20 erection, equipping, expansion, extension, improvement,  
21 installation, rehabilitation, renovation or repair of the  
22 buildings, structures and equipment.

23 (3) Costs and expenses of demolishing, removing or  
24 relocating buildings or structures on lands acquired or to be  
25 acquired and the expense of acquiring land to which buildings  
26 or structures may be moved or relocated.

27 (4) Costs and expenses of preparing land for  
28 development.

29 (5) Costs and expenses incidental to determining the  
30 feasibility or practicality of the project, including

1 engineering, legal and accounting and financial services, as  
2 well as any necessary studies or surveys.

3 (6) Working capital or other capital needs related to  
4 the project.

5 "Department." Except where otherwise provided, the  
6 Department of Community and Economic Development of the  
7 Commonwealth.

8 "Distressed community." Any of the following:

9 (1) An area which is designated a subzone, expansion  
10 subzone or improvement subzone under the act of October 6,  
11 1998 (P.L.705, No.92), known as the Keystone Opportunity  
12 Zone, Keystone Opportunity Expansion Zone and Keystone  
13 Opportunity Improvement Zone Act.

14 (2) Any other area designated as distressed according to  
15 standards adopted by the Pennsylvania Business Development  
16 Authority.

17 "Economic development organization." A community development  
18 financial institution, an industrial development agency or a  
19 local development district that is certified by the authority as  
20 possessing the qualifications necessary to prepare, evaluate and  
21 approve applications to the authority for financial assistance.

22 "Ex-Im Bank." The Export-Import Bank of the United States.

23 "Exports." Goods or services to be sold or performed outside  
24 the United States.

25 "Export business." Any for-profit corporation, limited  
26 liability company, partnership, proprietorship or other business  
27 entity involving export activities and employing 250 or fewer  
28 individuals.

29 "Farm commodity." Any agricultural, horticultural,  
30 aquacultural, vegetable, fruit and floricultural product of the

1 soil, livestock and meats, wools, hides, furs, poultry, eggs,  
2 dairy products, nuts, mushrooms, honey products and forest  
3 products.

4 "Federal agency." The United States of America, the  
5 President of the United States, the Congress of the United  
6 States and any department, corporation, agency or  
7 instrumentality designated or established by the United States  
8 of America.

9 "Financial assistance." Loans, guarantees, lines of credit,  
10 letters of credit and other financial arrangements that the  
11 Pennsylvania Business Development Authority is authorized to  
12 undertake under Subchapter E (relating to programs).

13 "Governing body." The body or board authorized by law to  
14 enact ordinances or adopt resolutions for a political  
15 subdivision.

16 "Hazardous substance." Any element, compound or material  
17 which is:

18 (1) Regulated as a hazardous air pollutant under section  
19 6.6 of the act of January 8, 1960 (1959 P.L.2119, No.787),  
20 known as the Air Pollution Control Act.

21 (2) A hazardous waste, as defined under section 103 of  
22 the act of July 7, 1980 (P.L.380, No.97), known as the Solid  
23 Waste Management Act.

24 (3) Regulated under the act of December 7, 1990  
25 (P.L.639, No.165), known as the Hazardous Material Emergency  
26 Planning and Response Act.

27 "Hospitality industry project." A for-profit project or  
28 venture which involves a business that operates a hotel, motel  
29 or other lodging facility, or a restaurant or other food service  
30 operation that is open to the public.



1 "Industrial development agency." A nonprofit organization  
2 which has as its purpose the promotion, encouragement,  
3 construction, development and expansion of new or existing  
4 industrial development projects.

5 "Industrial development project." A project involving the  
6 acquisition or improvement of real property within this  
7 Commonwealth to be occupied and operated by any of the  
8 following:

9 (1) An industrial enterprise.

10 (2) A manufacturing enterprise.

11 (3) A research and development enterprise.

12 (4) An agricultural producer.

13 (5) An agricultural processor.

14 "Industrial enterprise." An enterprise other than a  
15 mercantile, commercial or retail enterprise which has created or  
16 will create substantial employment opportunities. The term may  
17 include warehouses, distribution and terminal facilities and  
18 office buildings utilized as national or regional headquarters  
19 or computer or clerical operations centers.

20 "Industrial park project." A project sponsored by an  
21 economic development organization for the purpose of creating  
22 sites for the establishment of two or more industrial  
23 development projects.

24 "Local development district." Multicounty economic and  
25 community development organizations established under the act of  
26 December 7, 1994 (P.L.845, No.120), known as the Local  
27 Development District Act, to provide regional planning and  
28 development services to improve the economy and quality of life  
29 in their respective regions through a variety of activities,  
30 including, but not limited to, the fostering of public and

1 private partnerships and providing assistance to businesses.

2 "Manufacturing enterprise." An enterprise which is engaged  
3 in the giving of new shapes, new qualities or new combinations  
4 to matter by the application of skill and labor.

5 "Multiple-tenancy building project." A project sponsored by  
6 an economic development organization involving the acquisition  
7 or construction of any land, site, structure or facility for  
8 occupancy by two or more industrial enterprises, manufacturing  
9 enterprises, research and development enterprises, agricultural  
10 producers or agricultural processors, as those terms are defined  
11 in this chapter.

12 "Municipal authority." A public authority created under 53  
13 Pa.C.S. Ch. 56 (relating to municipal authorities) or under the  
14 former act of May 2, 1945 (P.L.382, No.164), known as the  
15 Municipality Authorities Act of 1945.

16 "Municipality." Any city, borough, town or township of the  
17 Commonwealth, each of which political subdivisions are separate  
18 incorporated municipalities of the Commonwealth for the purposes  
19 of this chapter.

20 "Natural disaster." As defined in 35 Pa.C.S. § 7102  
21 (relating to definitions).

22 "Normal agricultural operation." As defined in the act of  
23 June 10, 1982 (P.L.454, No.133), referred to as the Right-to-  
24 Farm Law.

25 "Obligee of the authority." Any of the following:

26 (1) A holder or owner of bonds of the Pennsylvania  
27 Business Development Authority, the Pennsylvania Industrial  
28 Development Authority or the Pennsylvania Minority Business  
29 Development Authority.

30 (2) A trustee or other fiduciary for any holder or owner

1 of bonds of the Pennsylvania Business Development Authority  
2 or its predecessors.

3 (3) A provider of a letter of credit, policy of  
4 municipal bond insurance or other credit enhancement or  
5 liquidity facility for bonds of the Pennsylvania Business  
6 Development Authority or its predecessors.

7 (4) A lessor or installment seller demising property to  
8 the Pennsylvania Business Development Authority or its  
9 predecessors in connection with a project.

10 (5) A provider of an interest rate management agreement  
11 or other agreement or arrangement authorized under section  
12 1714 (relating to powers).

13 "Pennsylvania-related company." A business entity which has  
14 significant operations in this Commonwealth or which will, as a  
15 condition of any agreement under this chapter, locate  
16 significant business operations in this Commonwealth.

17 "Philadelphia metropolitan statistical area." The  
18 Philadelphia, Pennsylvania, metropolitan division of the  
19 Philadelphia-Camden-Wilmington, Pennsylvania-New Jersey,  
20 Delaware-Maryland metropolitan statistical area as announced on  
21 June 6, 2003, by the United States Office of Management and  
22 Budget under standards for defining metropolitan and  
23 micropolitan statistical areas by the Office of Management and  
24 Budget for the 2000 decennial census of the United States Bureau  
25 of the Census as published in the Federal Register, Vol. 65, No.  
26 249, on December 27, 2000, comprising the Pennsylvania counties  
27 of Philadelphia, Delaware, Bucks, Montgomery and Chester.

28 "Predecessors." The Pennsylvania Industrial Development  
29 Authority or the Pennsylvania Minority Business Development  
30 Authority.

1 "Private developer." A person or entity engaged in the  
2 development of real estate and determined by the Pennsylvania  
3 Business Development Authority to be financially responsible to  
4 assume all obligations proposed to be undertaken.

5 "Production agriculture." The management and use of a normal  
6 agricultural operation for the production of a farm commodity.

7 "Project user." A person, political subdivision, municipal  
8 authority, Commonwealth agency or other entity that owns, leases  
9 or uses all or any part of a project.

10 "Redevelopment authority." An entity created under the act  
11 of May 24, 1945 (P.L.991, No.385), known as the Urban  
12 Redevelopment Law.

13 "Research and development enterprise." An enterprise for the  
14 discovery of new and the refinement of known substances,  
15 processes, products, theories and ideas. The term does not  
16 include enterprise activities directed primarily to the  
17 accumulation or analysis of commercial, financial or mercantile  
18 data.

19 "Server." A device on a computer network that manages  
20 network resources, including devices to manage network traffic,  
21 store files or process database queries.

22 "Server virtualization technology." The practice of hosting  
23 a software operating system within a virtual machine.

24 "Site preparation project." The construction of water and  
25 sewer lines, storm water systems, excavation, construction of  
26 access roads, parking facilities, pipelines, transformers and  
27 utility transmission lines and traffic control devices.

28 "Small business." An enterprise that employs fewer than 100  
29 persons, in the aggregate, on an annual basis.

30 "Supermarket." A retail store operated on a self-service

1 basis, primarily selling groceries, fresh produce, meat, bakery  
2 and dairy products. The term does not include a convenience  
3 store.

4 "Tourism." Any activity that promotes or encourages  
5 individuals or a group of individuals to travel to a location  
6 within this Commonwealth to engage in an activity or service for  
7 pleasure that is unavailable at home.

8 "Virtual machine." A self-contained software operating  
9 environment that operates within a host operating system server  
10 and simulates a hardware device, such as a computer or a server.

11 "Working capital." Capital used by a business for  
12 operations, excluding fixed assets and production machinery and  
13 equipment.

14 SUBCHAPTER B

15 STRUCTURE AND POWERS

16 Sec.

17 1711. Authority.

18 1712. Board.

19 1713. Duties.

20 1714. Powers.

21 1715. Operation, service and maintenance of a project or  
22 property.

23 § 1711. Authority.

24 (a) Establishment.--There is established an authority to be  
25 known as the Pennsylvania Business Development Authority. The  
26 authority shall be an instrumentality of the Commonwealth and a  
27 body corporate and politic, with corporate succession.

28 (b) Governance.--The authority shall be governed by the  
29 board. The powers of the authority shall be exercised by the  
30 board.

1 (c) Indebtedness.--The authority may incur indebtedness,  
2 including through the issuance of bonds. The term of  
3 indebtedness shall not exceed 30 years. Net proceeds from the  
4 sale of obligations incurred under this chapter shall be  
5 allocated for programs under Subchapter E (relating to programs)  
6 and for the payment of all reasonable costs and expenses related  
7 to the issuance.

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

12 (e) Fiscal year.--The fiscal year of the authority shall be  
13 the same as the fiscal year of the Commonwealth.

14 (f) Existence and dissolution.--

15 (1) The authority shall exist until terminated by law.

16 (2) The authority may be dissolved by law if all  
17 outstanding liabilities of the authority, including bonds and  
18 other contractual obligations, have been fully paid, retired,  
19 satisfied or discharged or provision has been made for  
20 payment of all outstanding liabilities of the authority,  
21 including bonds and other contractual obligations. Upon the  
22 dissolution of the authority, all funds, assets and other  
23 property of the authority shall vest in the Commonwealth.

24 (g) Procurement.--The authority shall be considered as an  
25 executive agency for the purposes of 62 Pa.C.S. Pt. I (relating  
26 to Commonwealth Procurement Code), except that the authority  
27 shall have the authority to procure its own services. When  
28 acting as its own purchasing agency for the procurement of  
29 services, the authority shall use the procedures provided under  
30 62 Pa.C.S. Pt. I.

1 (h) Commonwealth Attorneys Act.--The authority shall be  
2 considered an executive agency for the purposes of the act of  
3 October 15, 1980 (P.L.950, No.164), known as the Commonwealth  
4 Attorneys Act.

5 (i) Relationship with department.--

6 (1) The department shall provide administrative services  
7 and staff, including staff legal counsel, to the authority  
8 and the board. The authority shall reimburse the department  
9 for the costs of such services and staff.

10 (2) The authority may enter into agreements with the  
11 department setting forth their respective rights and  
12 obligations in carrying out their respective duties under  
13 this chapter, as well as rates of reimbursement, as  
14 applicable, for providing services under this subsection.

15 (j) Applicability.--The following acts shall apply to the  
16 authority and the board:

17 (1) The act of July 19, 1957 (P.L.1017, No.451), known  
18 as the State Adverse Interest Act.

19 (2) The act of February 14, 2008 (P.L.6, No.3), known as  
20 the Right-to-Know Law.

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

24 § 1712. Board.

25 (a) Members.--

26 (1) The authority shall be governed by a board  
27 consisting of 15 members.

28 (2) The following public officials shall serve as  
29 members of the board:

30 (i) The Secretary of Community and Economic

1           Development.

2           (ii) The Secretary of Agriculture.

3           (iii) The Secretary of Banking.

4           (iv) The Secretary of the Budget.

5           (3) Eleven individuals from the private sector shall  
6 serve as members of the board. Members appointed under this  
7 paragraph shall not be members or staff of the General  
8 Assembly and shall not be otherwise employed by the  
9 Commonwealth. Seven members from the private sector shall be  
10 appointed by the Governor and one member shall be appointed  
11 by each of the following:

12           (i) The President pro tempore of the Senate.

13           (ii) The Minority Leader of the Senate.

14           (iii) The Speaker of the House of Representatives.

15           (iv) The Minority Leader of the House of  
16 Representatives.

17           (b) Delegation of authority.--Public officials who are  
18 members of the board pursuant to subsection (a) (2) may designate  
19 a member of their staff to serve in their absence.

20           (c) Terms.--

21           (1) Public officials shall serve for the duration of  
22 their tenure in office.

23           (2) Members appointed under subsection (a) (3) shall  
24 serve for terms of four years, subject to the pleasure of the  
25 appointing authority, except that board members appointed  
26 under subsection (a) (3) (i), (ii), (iii) and (iv) shall serve  
27 for initial terms of two years.

28           (3) Members appointed to fill a vacancy created  
29 otherwise than by expiration of a term shall be appointed for  
30 the unexpired term of the preceding member.



1 (d) Organization.--

2 (1) The Governor shall appoint one member of the board  
3 to act as chairperson.

4 (2) The members shall select from among themselves and  
5 staff of the department the other officers of the board as  
6 they shall determine.

7 (e) Board action.--

8 (1) The board shall meet at the call of the chairperson.

9 (2) Eight members of the board shall constitute a  
10 quorum. When a quorum is present, a majority of those present  
11 shall be necessary to take any action on behalf of the  
12 authority.

13 (f) Compensation.--Members of the board shall be entitled to  
14 no compensation for their services, but shall be entitled to  
15 reimbursement for all necessary and reasonable expenses incurred  
16 in connection with the performance of their duties as members of  
17 the board.

18 (g) Fiduciary relationship.--The members of the board and  
19 the professional personnel of the board shall stand in a  
20 fiduciary relationship with the Commonwealth and the authority  
21 as to the moneys in the accounts of the authority and  
22 investments of the authority.

23 (h) Standard of care.--The members of the board, in  
24 performance of their duties under this chapter, shall exercise  
25 the standard of care required by 20 Pa.C.S. Ch. 73 (relating to  
26 municipalities investments).

27 (i) Liability.--Members of the board shall not be liable  
28 personally on any obligations of the authority, including bonds  
29 of the authority.

30 (j) Definition.--As used in this section, the term "member"

1 means an individual who serves on the board under subsection (a)  
2 as a public official or an individual from the private sector.  
3 § 1713. Duties.

4 (a) General rule.--The authority shall:

5 (1) Administer the programs described in Subchapter E  
6 (relating to programs).

7 (2) Fund the programs described in Subchapter E using  
8 the resources available under this chapter.

9 (3) Adopt bylaws.

10 (4) Adopt and publish guidelines for programs listed in  
11 Subchapter E as proposed by the department and for the  
12 certification of economic development organizations.  
13 Guidelines shall include applicable policies and procedures,  
14 criteria, application requirements and any other necessary  
15 and relevant information.

16 (5) Certify on an annual basis those economic  
17 development organizations that possess the qualifications  
18 necessary to evaluate and approve applications to the  
19 authority for financial assistance.

20 (b) Reports and publications.--

21 (1) Within 90 days of the effective date of this  
22 chapter, the authority shall submit for publication in the  
23 Pennsylvania Bulletin and on the Internet website of the  
24 department notification of the programs to be administered  
25 under this chapter. The notification shall include the name  
26 and brief description of each program, the name of a contact  
27 person and the anticipated time that funding, applications  
28 and official guidelines will become available.

29 (2) The authority shall submit for publication in the  
30 Pennsylvania Bulletin the program guidelines adopted under

1 subsection (a) (4) and shall maintain the guidelines on the  
2 department's Internet website.

3 (3) The authority shall, each year by the first day of  
4 March, publish and deliver to the Governor and the General  
5 Assembly a memorandum which shall outline the authority's  
6 goals and planned investments for the coming fiscal year.

7 (4) The authority shall annually post and maintain on  
8 the Internet website of the department an annual report,  
9 which at a minimum shall include:

10 (i) A list of the applicants and financial  
11 assistance approved during the previous fiscal year.

12 (ii) The name and business address of each  
13 recipient.

14 (iii) The amount and terms of the financial  
15 assistance.

16 (iv) A brief description of the project for which  
17 the financial assistance was awarded. The description  
18 shall include the commitment for the number of jobs  
19 created and retained and the total capital investment for  
20 the project.

21 (c) Audit.--

22 (1) The authority shall have the accounts and books of  
23 the authority audited annually by an independent certified  
24 public accounting firm.

25 (2) The authority shall, by December 31 of each year,  
26 file a copy of the audit required by paragraph (1) with the  
27 Secretary of the Senate, the Chief Clerk of the House of  
28 Representatives and the Office of the Budget.

29 § 1714. Powers.

30 The authority may:

1           (1) Borrow money, issue and assume bonds, obtain lines  
2 and letters of credit, provide loan guarantees and incur  
3 debt.

4           (2) Sue and be sued, implead and be impleaded,  
5 interplead, complain and defend in any court.

6           (3) Establish new economic development programs and the  
7 corresponding accounts necessary or desirable for its  
8 corporate purposes.

9           (4) Transfer funds among its accounts as necessary and  
10 desirable to effectuate the purposes of the programs set  
11 forth in Subchapter E (relating to programs).

12           (5) Retain accountants, auditors and financial experts  
13 to render services and engage the services of other advisors,  
14 consultants and agents as necessary.

15           (6) Acquire, accept, purchase, receive, collect, hold,  
16 convey and invest funds and property, whether tangible or  
17 intangible, from all sources, directly or by assignment,  
18 pledge or otherwise.

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

24           (8) Contract and execute all instruments, including  
25 financing agreements, letter of credit agreements, liquidity  
26 agreements, guarantees, sureties, mortgages, loans, standby  
27 loan commitments and contracts of insurance which are  
28 necessary or appropriate for carrying on the business of the  
29 authority.

30           (9) Impose and collect charges in connection with loan

1 commitments and servicing, including reimbursement of costs  
2 of financing.

3 (10) Impose interest rate penalties on borrowers who  
4 fail to fulfill commitments regarding job creation or  
5 retention, private investment and site location.

6 (11) Pledge the credit of the authority and provide  
7 security and liquidity to obligees of the authority as the  
8 authority deems necessary or appropriate.

9 (12) Use or pledge an account for a special purpose,  
10 including debt service reserves and other reserves, as may be  
11 necessary or desirable to carry out its powers and duties.

12 (13) With the advice of a financial management firm  
13 selected by the board, negotiate and enter into interest rate  
14 cap agreements, interest rate management agreements, collar  
15 agreements, corridor agreements, ceiling agreements, floor  
16 agreements, forward agreements, float agreements and other  
17 similar arrangements which, in the judgment of the authority,  
18 will assist the authority in managing the interest costs of  
19 the authority.

20 (14) Provide interest revenue-sharing on a quarterly  
21 basis to the originating economic development organization on  
22 loans sponsored by the economic development organization to  
23 offset administrative expenses and the cost of fulfilling  
24 certification obligations.

25 (15) Use moneys, excluding the proceeds of bonds, to pay  
26 the administrative expenses of the authority and of the  
27 department incurred under this chapter.

28 (16) Employ an executive director.

29 (17) Employ legal counsel and provide a reimbursement  
30 agreement for legal services by legal counsel for the

1 department.

2 (18) Adopt, use and alter a corporate seal.

3 (19) Pay or satisfy obligations of the authority.

4 (20) Negotiate modifications or alterations to financing  
5 agreements, mortgages or security interests.

6 (21) Foreclose on a mortgage or security interest in  
7 default.

8 (22) Commence any action necessary to protect or enforce  
9 any right conferred upon the authority by law, mortgage,  
10 security agreement, contract or other agreement.

11 (23) Bid for or purchase property that was the subject  
12 of a mortgage or security interest at a foreclosure or other  
13 sale and acquire and take possession of that property.

14 (24) Sell, mortgage, pledge, encumber, transfer, convey  
15 and dispose of any property, whether tangible or intangible.

16 (25) Acquire and sell loans, mortgages and security  
17 interests at public or private sale.

18 (26) Provide financial assistance to applicants and  
19 project users.

20 (27) Agree to and comply with conditions attached to  
21 Federal or Commonwealth assistance not inconsistent with the  
22 provisions of this chapter.

23 (28) Make rules regarding the operation of properties  
24 and facilities of the authority subject to agreements with  
25 obligees of the authority.

26 (29) Develop, adopt and implement binding policies or  
27 guidelines assuring that all persons are accorded equal  
28 opportunity in employment and contracting associated with the  
29 programs established under Subchapter E. This paragraph  
30 includes the authority's contractors, subcontractors,

1 assignees, lessees, agents, vendors and suppliers.

2 (30) Exercise rights provided by law for the benefit or  
3 protection of the authority or obligees of the authority.

4 (31) Procure insurance against any loss in connection  
5 with its programs, property and other assets.

6 (32) Promulgate regulations and adopt guidelines and  
7 statements of policy containing restrictions as it may deem  
8 necessary and appropriate to effectuate the public purposes  
9 of this chapter.

10 (33) Enter into agreements with applicants and project  
11 users providing, among other things, for any of the  
12 following:

13 (i) Financial assistance.

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

19 (iii) The applicants or project users to pay or  
20 cause to be paid all other costs of acquiring,  
21 constructing, maintaining and operating the projects  
22 being financed.

23 (iv) Financial assistance to an economic development  
24 organization to fund the revolving loan fund established  
25 by the economic development organization for projects  
26 eligible for financing by the authority.

27 (v) Conveyance with or without consideration of any  
28 part or all of a project being financed to the project  
29 user or applicant on or before payment of all bonds and  
30 contractual obligations of the authority incurred with

1 respect to the project.

2 (vi) Other matters as are customary or as are deemed  
3 necessary and appropriate by the authority.

4 (34) Undertake any action appropriate or necessary to  
5 effectuate the purposes of this chapter, or to exercise the  
6 powers set forth in this section, including any act  
7 reasonably implied from those powers.

8 Before a new policy or a change of policy takes effect, the  
9 board shall first approve it by a vote.

10 § 1715. Operation, service and maintenance of a project or  
11 property.

12 The authority shall not approve an application or finance a  
13 project if it would be required to operate, service or maintain  
14 the project. The authority may operate, service or maintain a  
15 property in foreclosure or default.

16 SUBCHAPTER C

17 BONDS

18 Sec.

19 1721. Bond issuance.

20 1722. Commonwealth and local taxation.

21 1723. Federal taxation.

22 1724. Validity of bonds, limitation on actions.

23 1725. Provisions of bonds and trust agreements and issuance of  
24 bonds.

25 1726. Validity of pledge.

26 1727. Commonwealth pledges.

27 1728. Bonds to be legal investments.

28 1729. Rights and remedies of obligees.

29 § 1721. Bond issuance.

30 (a) Authorization.--The authority may issue limited



1 obligation revenue bonds and other types of limited obligation  
2 revenue financing. Bonds of the authority shall be authorized by  
3 a resolution of the board, subject to subsection (c).

4 (b) Taxability.--The authority may issue both tax-exempt  
5 bonds and taxable bonds to fund the authority's programs.

6 (c) Bond requirements.--Bonds issued by the authority shall:

7 (1) Be of a series.

8 (2) Bear a date or dates.

9 (3) Be in denominations.

10 (4) Be signed by, or bear the facsimile signature of the  
11 officer designated by the board.

12 (5) Carry registration, exchangeability and  
13 interchangeability privileges.

14 (6) Be payable in any medium of payment and at any place  
15 or places.

16 (7) Mature on a date or dates not to exceed 30 years  
17 from the original issue date.

18 (8) Be subject to terms of redemption, if any.

19 (d) Issuance.--Bonds issued by the authority may:

20 (1) Be authenticated by an authenticating agent, fiscal  
21 agent or trustee.

22 (2) Be in any form, either coupon or fully registered  
23 without coupons, or in certificated or book-entry-only form.

24 (3) Bear or accrue interest at any rate or rates,  
25 whether fixed or variable.

26 (4) Be issued and delivered notwithstanding the fact  
27 that the officer whose signature appears on a coupon may no  
28 longer be an authenticating officer at the time of actual  
29 delivery.

30 (e) No debt or liability of the Commonwealth.--

1       (1) A bond issued by the authority shall not be a debt  
2 or liability of the Commonwealth and shall not create any  
3 indebtedness, liability or obligation on the part of the  
4 Commonwealth.

5       (2) A bond shall be payable solely from revenues of the  
6 authority or accounts pledged or otherwise available for  
7 their repayment.

8       (3) A bond shall contain on its face statements that:

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

13           (ii) Neither the Commonwealth nor any political  
14 subdivision is obligated to pay the principal or  
15 interest.

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 interest on  
19 the bonds.

20       (f) Sale.--Bonds may be sold at a public, invited or private  
21 sale at a price determined by the authority.

22       (g) Interim receipts.--Pending the preparation of the  
23 definitive bonds, interim receipts may be issued to the  
24 purchaser or purchasers of the bonds and shall contain the terms  
25 and conditions established by the authority.

26       (h) Negotiable instruments.--Bonds of the authority shall  
27 have the qualities of negotiable instruments under 13 Pa.C.S.  
28 (relating to commercial code).

29       (i) Use.--The authority may, as it deems necessary and  
30 desirable, use the proceeds of bonds to:

- 1           (1) provide financial assistance;  
2           (2) purchase loans, mortgages, security interests or  
3           loan participations;  
4           (3) pay incidental expenses in connection with activity  
5           under paragraphs (1) and (2), including administrative costs  
6           of the authority and the department;  
7           (4) pay expenses of authorizing and issuing the bonds;  
8           (5) pay principal, redemption or purchase price and  
9           interest on bonds; or  
10          (6) fund reserves.

11          (j) Refunding.--Subject to the provisions of this chapter,  
12          terms of bonds and any contracts entered into pursuant to this  
13          chapter, the authority may refund any outstanding debt of the  
14          authority whether the debt represents principal or interest, in  
15          whole or in part, at any time. For the purposes of this  
16          subsection, the term "refund" means the issuance and sale of  
17          obligations the proceeds of which are used or are to be used for  
18          the payment or redemption of outstanding obligations upon or  
19          prior to maturity.

20          § 1722. Commonwealth and local taxation.

21          (a) Authority.--Because the authority, as a public  
22          instrumentality of the Commonwealth, will be performing  
23          essential governmental functions in effectuating the purposes of  
24          this chapter, the authority shall not be subject to State or  
25          local taxation or assessment upon any property acquired or used  
26          or permitted to be used by the authority for its purposes.

27          (b) Bonds.--Bonds issued by the authority, the transfer and  
28          the income from the bonds, including any profit made on the sale  
29          of such bonds, shall be free from State and local taxation  
30          within this Commonwealth. The exclusion under this subsection

1 shall not extend to gift, estate, succession or inheritance  
2 taxes, or any other taxes not levied or assessed directly on the  
3 bonds, their transfer, the income from the bonds or the  
4 realization of profits on their sale.

5 § 1723. Federal taxation.

6 (a) Allocation.--If the bonds issued by the authority for a  
7 project are tax-exempt bonds for which Federal law requires an  
8 allocation, the department may issue an allocation upon receipt  
9 of a written request by the authority. An allocation must be  
10 issued by the department prior to the approval of the resolution  
11 authorizing the issuance of the bonds by the authority.

12 (b) Approval.--If gubernatorial approval is required by  
13 Federal or State law, the Governor may approve the issuance of  
14 bonds upon receipt of written request for approval from the  
15 authority. The written request must contain all of the  
16 following, to the extent required by Federal law:

17 (1) A statement that the authority has conducted a  
18 public hearing, with appropriate public notice, concerning  
19 the purposes for which the bonds are to be issued.

20 (2) A description of the project or projects to be  
21 financed.

22 (3) A description of the method of financing the project  
23 or projects.

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

26 § 1724. Validity of bonds, limitation on actions.

27 (a) Presumption.--Bonds reciting in substance that they have  
28 been issued by the authority to accomplish the public purposes  
29 of this chapter shall be conclusively deemed in any suit, action  
30 or proceeding involving the validity or enforceability of the

1 bonds or their security to have been issued for the public  
2 purposes of this chapter.

3 (b) Estoppel.--After issuance, bonds shall be conclusively  
4 presumed to be fully authorized and issued under the laws of  
5 this Commonwealth, and any person shall be estopped from  
6 questioning their validity, sale, execution or delivery by the  
7 authority.

8 § 1725. Provisions of bonds and trust agreements and issuance  
9 of bonds.

10 (a) Provisions.--A resolution authorizing the issuance of  
11 bonds or any trust agreement approved in or by a resolution  
12 authorizing the issuance of bonds may contain provisions which  
13 do any of the following:

14 (1) Secure the bonds.

15 (2) Establish a covenant as to any of the following:

16 (i) Additional bonds to be issued and terms,  
17 conditions and limitations on such bonds.

18 (ii) Rank or priority of bonds with respect to liens  
19 or security interests.

20 (iii) Limitations on the authority's right to sell,  
21 pledge or otherwise dispose of bonds or notes of  
22 governmental units, loan agreements or other property.

23 (iv) Custody, application, investment and  
24 disposition of proceeds of bonds.

25 (v) Incurring of other debts or obligations by the  
26 authority.

27 (vi) Payment of principal of or interest on bonds.

28 (vii) Sources and methods of payment.

29 (viii) Redemption, purchase and tender of bonds by  
30 the authority or the bondholders and the privilege of

1 exchange of the bonds for other bonds.

2 (ix) Use, investment and disposition of the money  
3 held in special funds, accounts or reserves.

4 (x) Use of any or all of the authority's real or  
5 personal property.

6 (xi) Warrant of title to the authority's real or  
7 personal property.

8 (xii) Pledging or granting a security interest in  
9 all or any part of the authority's revenues or any part  
10 of its property to which its right or title exists or  
11 which may later come into existence.

12 (3) Establish a covenant against any of the following:

13 (i) Permitting or suffering any lien on all or any  
14 part of its revenues or property.

15 (ii) Extending the time for the payment of bonds or  
16 interest.

17 (4) Provide for any of the following:

18 (i) Replacement of lost, stolen, destroyed or  
19 mutilated bonds.

20 (ii) Maintenance of the authority's real and  
21 personal property.

22 (iii) Replacement of the authority's real and  
23 personal property.

24 (iv) Insurance to be carried on the authority's real  
25 and personal property and the use and disposition of the  
26 insurance proceeds.

27 (v) Rights, liabilities, powers and duties arising  
28 upon the breach of any covenant, condition or obligation.

29 (vi) Letters of credit, bond insurance and other  
30 facilities for credit enhancement and liquidity.

1           (5) Prescribe:

2           (i) Procedures, if any, by which the terms of any  
3 contract with bondholders may be amended or abrogated.

4           (ii) The percentage of the principal amount of bonds  
5 the holders of which must consent to the amendment or  
6 abrogation of any contract.

7           (iii) The manner in which the consent under  
8 subparagraph (ii) may be given.

9           (iv) Events of default.

10          (v) Terms and conditions upon which any or all of  
11 the bonds become or may be declared due and payable  
12 before stated maturity following an event of default.

13          (vi) Terms and conditions upon which the declaration  
14 of default and its consequence may be waived.

15          (6) Create or authorize the creation of special funds or  
16 accounts to be held in trust or otherwise for the benefit of  
17 bondholders or of reserves for debt service or other  
18 purposes.

19          (7) Vest in a trustee any property, rights, powers and  
20 duties in trust for the benefit of bondholders.

21          (8) Limit the rights, powers and duties of a trustee,  
22 and the right of bondholders to appoint a trustee.

23          (9) Establish the terms and conditions upon which a  
24 trustee or the bondholders may enforce a covenant or rights  
25 securing or relating to the bonds.

26          (10) Exercise all or any part or combination of the  
27 powers granted in this chapter.

28          (11) Do or refrain from doing any other act and thing  
29 necessary, convenient or desirable in order to better secure  
30 the bonds of the authority or, in the absolute discretion of

1 the authority, as will tend to make bonds of the authority  
2 more marketable. This paragraph applies notwithstanding that  
3 the covenant, act or thing may not be specifically enumerated  
4 in this chapter as long as the covenant, act or thing is in  
5 accordance with the intent of this chapter.

6 (12) Pay the costs or expenses incident to any of the  
7 foregoing.

8 (b) Issuance of bonds.--Bonds may be issued under one or  
9 more separate resolutions or trust agreements. A series of bonds  
10 may be separately secured from another series of bonds under the  
11 resolutions or trust agreements.

12 § 1726. Validity of pledge.

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

30 § 1727. Commonwealth pledges.



1 (a) Bondholders.--The Commonwealth pledges to and agrees  
2 with each obligee of the authority that the Commonwealth will  
3 not limit or alter the rights and powers vested in the authority  
4 or otherwise created by this chapter in any manner inconsistent  
5 with the obligations of the authority to its obligees until all  
6 bonds at any time issued, together with the interest on the  
7 bonds, are fully paid and discharged.

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

15 § 1728. Bonds to be legal investments.

16 (a) Investments.--Bonds issued pursuant to this chapter  
17 shall constitute securities in which any person or entity may  
18 properly and legally invest funds, including capital, deposits  
19 or other funds in their control or belonging to them.

20 (b) Deposits.--Bonds issued by the authority are securities  
21 which may properly and legally be deposited with and received by  
22 a government agency for any purpose for which the deposit of  
23 bonds or other obligations of the Commonwealth are authorized by  
24 law.

25 § 1729. Rights and remedies of obligees.

26 The rights and remedies conferred upon or granted to obligees  
27 of the authority pursuant to this chapter shall be in addition  
28 to and not in limitation of rights and remedies lawfully granted  
29 to obligees of the authority by the resolution providing for the  
30 issuance of bonds or by any trust agreement or other agreement

1 under which the bonds may be issued or secured.

2 SUBCHAPTER D

3 ACCOUNTS

4 Sec.

5 1731. Establishment of accounts.

6 1732. Deposits.

7 1733. Use.

8 1734. Account restrictions.

9 § 1731. Establishment of accounts.

10 In addition to other accounts that may be established by the  
11 authority from time to time, there are established the following  
12 accounts:

13 (1) The Small Business First Account.

14 (2) The Community Economic Development Account.

15 (3) The Export Financing Account.

16 (4) The Pennsylvania Industrial Development Account.

17 (5) The Machinery and Equipment Loan Account.

18 (6) The Disadvantaged Business Development Account.

19 (7) The First Industries Account.

20 (8) The Second Stage Loan Guarantee Account.

21 § 1732. Deposits.

22 Loan repayments, recaptured funds and bond proceeds from the  
23 programs described in Subchapter E (relating to programs), as  
24 well as appropriations, including, without limitation, those  
25 appropriations made prior to the effective date of this act for  
26 the same programs or similar programs to those described in  
27 Subchapter E and any other available funds which are or may  
28 become available, not pledged to be deposited or used elsewhere,  
29 shall be deposited in the respective program accounts. Separate  
30 subaccounts may be established in each program account for

1 purposes of pledging funds in the subaccounts to secure specific  
2 bonds and other obligations of the authority.

3 § 1733. Use.

4 Funds deposited in each of the program accounts shall be made  
5 available for additional loans, guarantees and other financial  
6 assistance as provided by the respective programs.

7 § 1734. Account restrictions.

8 (a) Pennsylvania Industrial Development Account.--

9 (1) The Pennsylvania Industrial Development Account,  
10 established in section 1731 (relating to establishment of  
11 accounts), shall be a revolving fund, whereby all  
12 appropriations and payments made into the account, including  
13 repayment of loans or funds from mortgages and any other  
14 agreements made and entered into by the authority under the  
15 program, shall be applied and reapplied to the purposes of  
16 the Pennsylvania Industrial Development Program.

17 (2) If at any time the authority determines that funds  
18 held in the Pennsylvania Industrial Development Account  
19 exceed the amount required to carry out the purposes of the  
20 program, the authority shall take such action as may be  
21 required to transfer the excess funds to the General Fund of  
22 the State Treasury, subject to the provisions of section  
23 1771.1 (relating to transfer from Pennsylvania Industrial  
24 Development Authority to Pennsylvania Business Development  
25 Authority).

26 (b) Export Financing Account.--Funds in the Export Financing  
27 Account must be continuously secured by a pledge of direct  
28 obligations of the United States or of the Commonwealth having  
29 an aggregate market value, exclusive of accrued interest, at  
30 least equal to the balance on deposit in the account. The

1 securities shall be deposited with the authority to be held by a  
2 trustee or agent satisfactory to the authority. Bank and trust  
3 companies are authorized to give security under this subsection.

4 SUBCHAPTER E

5 PROGRAMS

6 Sec.

7 1750. Programs generally.

8 1751. Small Business First Program.

9 1752. Community Economic Development Program.

10 1753. Export Financing Program.

11 1754. Pennsylvania Industrial Development Program.

12 1755. Machinery and Equipment Loan Program.

13 1756. Disadvantaged Business Development Program.

14 1757. First Industries Program.

15 1758. Second Stage Loan Guarantee Program.

16 § 1750. Programs generally.

17 (a) Establishment of programs.--In addition to the programs  
18 described in this subchapter, the authority may from time to  
19 time establish new programs that further economic development  
20 within this Commonwealth.

21 (b) Application process.--Applications for financial  
22 assistance under this chapter must be prepared with the  
23 assistance of a certified economic development organization that  
24 shall approve the application before it is submitted to the  
25 authority and shall comply with subsection (c) and with any  
26 additional requirement of the applicable program or programs.  
27 Applications shall be in the form required by the authority and  
28 shall bear the applicant's name and address together with a  
29 description of the type and amount of financial assistance  
30 requested. Upon review of an application, the authority shall

1 notify the applicant of its decision or request additional  
2 information or certifications prior to making its decision.

3 (c) Application requirements.--Applications shall include  
4 the following information, where applicable:

5 (1) A description of the applicant's business or, if the  
6 applicant is not the borrower, the borrower's business,  
7 including:

8 (i) The type of business conducted.

9 (ii) The location and age of the business.

10 (iii) A list of all offices of the applicant located  
11 in this Commonwealth.

12 (iv) The names and addresses of the principals.

13 (v) The number of current employees and an estimate  
14 of future employment.

15 (2) A description of the project, including:

16 (i) The location.

17 (ii) The total estimated project cost, prepared by  
18 an engineer or other qualified professional, where  
19 appropriate, and the identification of all sources of  
20 capital for the project.

21 (iii) A legal description of all real property held  
22 or to be acquired for the establishment of the project.

23 (iv) A general description and statement of value of  
24 any real or personal property of the applicant and, if  
25 applicable, the buyer or tenant of the project, to be  
26 applied to the establishment of the project.

27 (3) A statement that the project is consistent with any  
28 existing comprehensive county plan where the project is  
29 located.

30 (4) A firm commitment from the intended project user to

1 use the project upon completion.

2 (5) A brief description of the anticipated economic  
3 impact to this Commonwealth and the host municipality as a  
4 result of the project.

5 (6) Any plans and other documents as may be required to  
6 show the type, structure and general character of the  
7 project.

8 (7) Financial statements of the applicant, proposed  
9 guarantors and any other party whose credit is significant to  
10 the approval of the financial assistance. The authority may,  
11 by guidelines that shall be submitted for publication in the  
12 Pennsylvania Bulletin, specify the period to be covered by  
13 the financial statements and whether the statements must be  
14 compiled, reviewed or prepared by a certified public  
15 accountant.

16 (8) Any information required by the program or programs  
17 under which financial assistance may be provided.

18 (9) Any other information required by the authority.

19 (d) Review and approval.--

20 (1) In reviewing applications, the authority shall  
21 consider the following, where applicable:

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

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

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

30 (iv) Whether the sources of financial commitments

1 for funds in excess of the amount requested under this  
2 chapter are reliable.

3 (v) Whether the applicant has complied with terms  
4 required by the applicable program or programs listed  
5 under the corresponding sections of this chapter.

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

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

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

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

16 (x) Any other information deemed relevant by the  
17 authority.

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

23 (3) No financial assistance shall be approved if the  
24 proceeds would be used to:

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

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

30 (iii) relocate a business to another part of this

1 Commonwealth, unless approved in advance by the authority  
2 which shall consider the negative economic impact on the  
3 community that the business is leaving; or

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

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

16 (ii) Upon approving an application for a loan, the  
17 authority shall draw an advance equal to the principal  
18 amount of the loan from the appropriate account or  
19 accounts; and prior to providing loan funds to the  
20 applicant, the authority shall require the applicant to  
21 execute a note and to enter into a loan agreement and any  
22 other agreement as the authority shall require.

23 (e) Reporting and inspection.--An applicant for or a  
24 recipient of a loan, loan guarantee or grant made under this  
25 chapter shall, upon request:

26 (1) Permit the authority to inspect its premises, books  
27 and records.

28 (2) Provide updated information to the authority if  
29 conditions change to the extent that the information  
30 originally given becomes inaccurate or misleading.



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

3 § 1751. Small Business First Program.

4           (a) General rule.--The Small Business First Program shall  
5 provide low-interest loans and lines of credit to small  
6 businesses for capital development projects that will stimulate  
7 the expansion and assist in the viability of small businesses,  
8 thereby creating new jobs and retaining existing jobs in this  
9 Commonwealth.

10          (b) Application.--In addition to the requirements listed in  
11 section 1750(c) (relating to programs generally), the  
12 application shall include the following:

13           (1) A description of the capital development project,  
14 including the following:

15                   (i) The number of employment opportunities to be  
16 created or preserved by the proposed capital development  
17 project.

18                   (ii) If the applicant is an agricultural producer, a  
19 demonstration that there is a substantial likelihood that  
20 the project will enhance the agricultural operation.

21           (2) A financial commitment from a responsible source for  
22 any cost of the project in excess of the amount requested.

23           (3) A demonstration of the ability of the applicant to  
24 meet and satisfy the debt service as it becomes due and  
25 payable.

26           (4) The existence and sufficiency of collateral for the  
27 loan.

28          (c) Conditions and restrictions.--A loan made under this  
29 section may:

30           (1) Finance the development, construction, renovation or

1 acquisition of land, buildings, machinery or equipment,  
2 licenses for wholesalers and distributors to sell alcoholic  
3 beverages or may be used for working capital.

4 (2) Not exceed 50% of the total capital development  
5 project costs. For the purposes of this paragraph, capital  
6 development project costs incurred during the 12-month period  
7 prior to the date of submission of the application to the  
8 authority shall be considered part of the total capital  
9 development project costs.

10 (d) Loan terms.--The following terms shall apply:

11 (1) A loan for real property shall have a repayment  
12 period of up to 15 years.

13 (2) A loan for machinery and equipment shall have a  
14 repayment period of up to ten years.

15 (3) A loan or line of credit for working capital shall  
16 have a repayment period of up to three years.

17 (4) If, in a capital development project, two or more  
18 uses are planned, the loan terms may be combined.

19 (5) The interest rate shall be determined by the  
20 authority.

21 (6) The authority shall determine the job retention or  
22 job creation requirements of each project financed in whole  
23 or in part through a loan made under this section.

24 (7) All loans shall be secured by lien positions on  
25 collateral at the highest level of priority, as determined by  
26 the authority.

27 (e) Penalty for noncompliance.--In the event that a loan  
28 recipient fails to create or preserve the number of employment  
29 opportunities specified in the approved application, the  
30 authority may impose a penalty equal to an increase of up to 5%

1 above the existing loan interest rate for the remainder of the  
2 loan, unless it determines that the failure is due to  
3 circumstances outside the control of the loan recipient.

4 § 1752. Community Economic Development Program.

5 (a) General rule.--The Community Economic Development  
6 Program shall provide loans for small businesses located in  
7 distressed communities which are involved in the business-to-  
8 public service, mercantile, commercial or point-of-sale retail  
9 sectors in order to enhance the economic well-being of the  
10 community by employing residents of the community and by  
11 providing products or services to that community.

12 (b) Conditions and restrictions.--The following shall apply:

13 (1) A loan for land, buildings, machinery, equipment or  
14 working capital may not exceed 50% of the total capital  
15 development project costs. For the purposes of this  
16 paragraph, capital development project costs incurred during  
17 the 12-month period prior to the date of submission of the  
18 application to the authority shall be considered part of the  
19 total capital development project costs.

20 (2) Each capital development project shall meet the job  
21 retention or job creation requirements established by the  
22 authority.

23 (3) The maximum loan amount available under this program  
24 will be set by the authority.

25 (4) No loans shall be approved if the proceeds of the  
26 loan would be used to provide funds for speculation in real  
27 or personal property, whether tangible or intangible.

28 (c) Loan terms.--The following terms shall apply:

29 (1) A loan for real property shall have a repayment  
30 period of up to 15 years.

1       (2) A loan for machinery and equipment shall have a  
2 repayment period of up to ten years.

3       (3) A loan or line of credit for working capital shall  
4 have a repayment period of up to three years.

5       (4) All loans shall be secured by lien positions on  
6 collateral at the highest level of priority, as determined by  
7 the authority.

8       (d) Application.--In addition to the requirements listed in  
9 section 1750(c) (relating to programs generally), the  
10 application shall include the following:

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

14       (2) A demonstration that the capital development project  
15 will have a direct impact on the community in which the  
16 capital development project is or will be located, on  
17 residents of that community or on the local and regional  
18 economy. The authority shall establish criteria that will  
19 assist in making this demonstration.

20       (3) A projection of the number of employment  
21 opportunities to be created or preserved by the proposed  
22 capital development project.

23       (e) Penalty for noncompliance.--In the event that a loan  
24 recipient fails to create or preserve the number of employment  
25 opportunities specified in the approved application, the  
26 authority may impose a penalty equal to an increase of up to 5%  
27 above the existing rate for the remainder of the loan, unless it  
28 determines that the failure is due to circumstances outside the  
29 control of the loan recipient.

30 § 1753. Export Financing Program.

1 (a) General rule.--The Export Financing Program shall  
2 provide loans and lines of credit to export businesses for  
3 working capital and accounts receivable financing, in order to  
4 increase the level of foreign exports and the number of  
5 Pennsylvania companies exporting goods and services.

6 (b) Application.--In addition to the requirements listed in  
7 section 1750(c) (relating to programs generally), the  
8 application shall include the following:

9 (1) The number of employment opportunities to be created  
10 or preserved by the proposed capital development project.

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

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

17 (4) A demonstration that the applicant will be able to  
18 meet and satisfy the debt service as it becomes due and  
19 payable.

20 (5) The existence and sufficiency of collateral for the  
21 loan.

22 (c) Conditions and restrictions.--

23 (1) The maximum loan amount, repayment period and  
24 interest rate available under this program will be set by the  
25 authority.

26 (2) The authority may, in its discretion, require any of  
27 the following:

28 (i) That the applicant be eligible for an export  
29 credit insurance policy for small businesses offered by  
30 the Ex-Im Bank.

1           (ii) That the export credit sales contract be  
2           insured by an export credit insurance policy offered by  
3           the Ex-Im Bank.

4           (iii) That the loan be guaranteed by the working  
5           capital guaranty program offered by the Ex-Im Bank.

6           (3) No loan shall be approved if the proceeds of the  
7           loan would be used to provide funds for speculation in real  
8           or personal property, whether tangible or intangible.

9           (4) All loans shall be secured by lien positions on  
10          collateral at the highest level of priority, as may be  
11          determined by the authority.

12          (d) Penalty for noncompliance.--In the event that a loan  
13          recipient fails to create or preserve the number of employment  
14          opportunities specified in the approved application, the  
15          authority may impose a penalty equal to an increase of up to 5%  
16          above the existing loan interest rate for the remainder of the  
17          loan, unless it determines that the failure is due to  
18          circumstances outside the control of the loan recipient.

19          § 1754. Pennsylvania Industrial Development Program.

20          (a) General rule.--The Pennsylvania Industrial Development  
21          Program shall provide loans for industrial development projects,  
22          industrial parks and multiple-tenancy building projects in order  
23          to increase employment levels and the overall economic health of  
24          this Commonwealth.

25          (b) Loans for industrial development projects.--The  
26          authority may contract to loan an amount not to exceed 50% of  
27          the cost of establishing the industrial development project,  
28          subject, however, to the following conditions:

29                  (1) Prior to the making of any loan under this  
30                  paragraph, the authority shall determine that:

1           (i) The borrower is responsible to assume all  
2           obligations imposed by the authority in connection with  
3           the project, financial or otherwise, and to undertake the  
4           operation of the project.

5           (ii) The borrower has obtained from other  
6           independent and responsible sources a firm commitment for  
7           any funds which, in addition to the loan made pursuant to  
8           this paragraph and any other property or assets held by  
9           the borrower, shall be necessary for the completion and  
10           operation of the project.

11           (2) The authority shall determine the interest rate and  
12           repayment period of any loan made under this section.

13           (3) A loan made under this section shall be evidenced by  
14           note of the borrower, and secured by a mortgage on the  
15           project for which such loan was made, subordinate only to the  
16           mortgage securing the first lien obligation issued to secure  
17           the commitment of funds provided to pay the cost of the  
18           project from the aforesaid independent and responsible  
19           sources, and used in the financing of the project.

20           (4) The authority may require such additional security  
21           it may deem necessary.

22           (c) Loans for industrial parks.--The authority may contract  
23           to loan an amount not to exceed 90% of the cost of establishing  
24           an industrial park project, subject to the following conditions:

25           (1) The authority shall determine the interest rate and  
26           repayment period of any loan made under this subsection.

27           (2) A loan made under this section shall be evidenced by  
28           note of the borrower and secured by a first mortgage on the  
29           industrial park or by participation in a first mortgage. If,  
30           however, a Federal agency is participating in the financing

1 of the industrial park, the authority may take as security  
2 for its loan a mortgage on the industrial park which is  
3 second only to the mortgage given to the Federal agency.

4 (3) If a loan made under this section is secured by  
5 participation in a first mortgage on the industrial park, a  
6 portion of the loan, not to exceed 10% of the cost of the  
7 project, may be secured by a second mortgage on the  
8 industrial park which is second only to the participating  
9 first mortgage.

10 (d) Loans for multiple-tenancy building projects.--The  
11 authority may contract to loan an amount not to exceed 75% of  
12 the cost of establishing the multiple-tenancy building project,  
13 subject, however, to the following conditions:

14 (1) The authority shall determine the interest rate and  
15 repayment period of any loan made under this section.

16 (2) A loan made under this section shall be evidenced by  
17 note of the borrower and secured by a first mortgage or  
18 participation in a first mortgage on the multiple-tenancy  
19 building project.

20 (3) The authority may contract to loan an amount not to  
21 exceed 75% of the cost of the project if the loan is secured  
22 by a first mortgage or participation in a first mortgage on  
23 the project; otherwise, the authority may contract to loan an  
24 amount not to exceed 40% of the cost of the project.

25 (4) If a loan made under this section is secured by a  
26 participation in a first mortgage on the project, the  
27 authority may permit a portion of its loan, not to exceed 10%  
28 of the cost of the project, to be secured by a second  
29 mortgage on the project which is second only to the  
30 participating first mortgage.



1 (e) Application.--In addition to the requirements listed in  
2 section 1750(c) (relating to programs generally), the  
3 application shall include the following:

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

7 (2) The cost or estimate of the cost of establishing the  
8 project. As used in this section, "cost" shall include  
9 financing charges, including interest incurred prior to and  
10 during construction, but shall not include the cost of any  
11 machinery, equipment or fixtures necessary for the project or  
12 the installation or maintenance of any such machinery,  
13 equipment or fixtures.

14 (3) Evidence of the arrangement made by the borrower for  
15 the financing of all costs of the project over and above the  
16 participation of the authority.

17 (4) Evidence that the establishment of the project will  
18 not cause the removal of an industrial enterprise,  
19 manufacturing enterprise, research and development  
20 enterprise, agricultural producer or agricultural processor  
21 from one area of the Commonwealth to another area of the  
22 Commonwealth, as determined by the authority.

23 (f) Employment projection audits.--The authority shall  
24 implement a procedure to determine whether the employment  
25 projections set out in the loan application are achieved.

26 § 1755. Machinery and Equipment Loan Program.

27 (a) General rule.--The Machinery and Equipment Loan Program  
28 shall provide loans to businesses involved in industrial  
29 processes, manufacturing, mining, production agriculture,  
30 information technology or biotechnology for the purchase,

1 installation or upgrade of equipment and machinery, including  
2 computer hardware and software.

3 (b) Application.--In addition to the requirements listed in  
4 section 1750(c) (relating to programs generally), the  
5 application shall include the following:

6 (1) A demonstration that the applicant is able to meet  
7 and satisfy all debt service as it becomes due and payable.

8 (2) Evidence of available and sufficient collateral,  
9 including satisfactory lien positions on real and personal  
10 property.

11 (3) Sufficient evidence that funds shall be used only to  
12 acquire and install new equipment and machinery or upgrade  
13 existing equipment and machinery, including the acquisition,  
14 application and utilization of computer hardware and  
15 software.

16 (4) The number of net employment opportunities to be  
17 created by the proposed project unless the business is  
18 involved in production agriculture.

19 (5) Evidence that the loan project will increase the  
20 business's competitiveness within its respective industry.

21 (c) Loan terms and limitations.--The following shall apply:

22 (1) No loan shall exceed 50% of the cost of the project.

23 (2) Loan terms shall not exceed ten years in duration.

24 (3) Proceeds of loans made under this section may not be  
25 used for speculation in any kind of property, real or  
26 personal, tangible or intangible.

27 (4) Loans shall be made only for projects that  
28 demonstrate a significant likelihood of resulting in job  
29 creation or retention, as established by the authority. This  
30 paragraph does not apply to loans made to business

1 enterprises involved in production agriculture.

2 (d) Security.--All loans shall be secured by no less than a  
3 second lien position on the equipment purchased and other  
4 sufficient collateral as determined by the authority.

5 (e) Penalty for noncompliance.--In the event that a loan  
6 recipient fails to create or preserve the number of employment  
7 opportunities specified in the approved application, the  
8 authority may impose a penalty equal to an increase of up to 5%  
9 above the existing rate for the remainder of the loan, unless it  
10 determines that the failure is due to circumstances outside the  
11 control of the loan recipient.

12 § 1756. Disadvantaged Business Development Program.

13 (a) General rule.--The Disadvantaged Business Development  
14 Program shall provide financial assistance to businesses owned  
15 by socially and economically disadvantaged persons.

16 (b) Application.--In addition to the requirements listed in  
17 section 1750(c) (relating to programs generally), the  
18 application shall include the following:

19 (1) A statement that the applicant is a United States  
20 citizen, resident of this Commonwealth and member of a group  
21 or groups which have suffered disadvantages arising from  
22 chronic racial, ethnic or economic circumstances.

23 (2) An explanation as to how the applicant's ability to  
24 compete in the free enterprise system has been impaired due  
25 to diminished capital and credit opportunities, as compared  
26 to others in the same or a similar line of business who are  
27 not socially and economically disadvantaged.

28 (c) Loan terms and conditions.--The authority shall have the  
29 power to lend money to and to guarantee, endorse or act as  
30 surety on the bonds, notes, contracts or other obligations of,

1 or otherwise financially assist a business owned by a person who  
2 meets the criteria in subsection (a), and to establish and  
3 regulate the terms, security and conditions with respect to any  
4 such loans or financial assistance and the charges for interest  
5 and service connected therewith.

6 § 1757. First Industries Program.

7 (a) General purpose.--The First Industries Program shall  
8 provide financial assistance for projects related to tourism and  
9 agriculture located within this Commonwealth.

10 (b) Loans.--The First Industries Program shall provide loans  
11 to businesses involved in tourism and agriculture that would  
12 otherwise satisfy the requirements for a loan under section 1751  
13 (relating to Small Business First Program), 1752 (relating to  
14 Community Economic Development Program) or 1755 (relating to  
15 Machinery and Equipment Loan Program).

16 (c) Loan guarantees.--An applicant may request a guarantee  
17 for a loan to be made by a commercial lending institution or  
18 community development financial institution to assist with the  
19 financing of a project related to tourism or agriculture. The  
20 following apply:

21 (1) In addition to the requirements listed in section  
22 1750(c) (relating to programs generally), the application  
23 shall include the following:

24 (i) A description of the proposed project financing,  
25 including terms, conditions and the collateral or  
26 security required for the loan for which the guarantee is  
27 being requested.

28 (ii) A copy of the borrower's last two years of  
29 financial statements.

30 (2) The maximum guaranteed amount and percentage made

1 under this section shall be determined by the authority.

2 (3) No less than \$500,000 of private funds must be  
3 invested in the project.

4 (4) In addition to any other terms and conditions  
5 required by the authority, the guarantee agreement shall  
6 provide for the following:

7 (i) The procedure for the submission by the  
8 commercial lending institution or community development  
9 financial institution of a claim for payment. This  
10 procedure shall require that the commercial lending  
11 institution or community development financial  
12 institution demonstrate that it has exhausted all  
13 available remedies against the borrower, other guarantors  
14 and collateral before seeking payment under the  
15 agreement.

16 (ii) A requirement that a percentage of any moneys  
17 recovered subsequent to the payment of a claim by the  
18 authority be remitted to the authority.

19 (iii) Periodic reporting requirements by the  
20 commercial lending institution or community development  
21 financial institution regarding itself and the loans that  
22 have been awarded guarantees under this section.

23 § 1758. Second Stage Loan Guarantee Program.

24 (a) General purpose.--The Second Stage Loan Guarantee  
25 Program shall provide loan guarantees to commercial lending  
26 institutions that make loans to life sciences, advanced  
27 technology or manufacturing businesses located in this  
28 Commonwealth.

29 (b) Application for enrollment.--A commercial lending  
30 institution may apply for enrollment in the program authorized

1 by this section. The application shall be in the form required  
2 by the authority and, in addition to the requirements listed in  
3 section 1750(c) (relating to programs generally), shall include  
4 the following:

5 (1) The name and address of the commercial lending  
6 institution and the name and title of the individual who will  
7 serve as the point of contact for the commercial lending  
8 institution.

9 (2) A statement defining the service area of the  
10 commercial lending institution.

11 (3) A statement describing the commercial lending  
12 activities engaged in by the commercial lending institution  
13 and how the institution intends to expand those activities as  
14 a result of its participation in the program authorized by  
15 this section.

16 (c) Enrollment approval.--Upon approval of an application  
17 for enrollment, the authority shall execute a master guarantee  
18 agreement in favor of the commercial lending institution. In  
19 addition to any other terms and conditions required by the  
20 authority, the master guarantee agreement shall provide for the  
21 following:

22 (1) The procedure for the submission of a claim for  
23 payment by the commercial lending institution. The procedure  
24 shall require that the commercial lending institution  
25 demonstrate that it has exhausted all available remedies  
26 against the borrower, other guarantors and collateral for the  
27 loan before seeking payment under the agreement.

28 (2) A requirement that a percentage of any moneys  
29 recovered by the commercial lending institution subsequent to  
30 any payment made under the master guarantee agreement by the

1 authority be remitted to the authority.

2 (3) Periodic reporting requirements by the commercial  
3 lending institution regarding itself and regarding the loans  
4 for which guarantee certificates have been issued under this  
5 section.

6 (d) Application for guarantee.--A commercial lending  
7 institution enrolled in the program authorized by this section  
8 may submit an application to the authority for the guarantee of  
9 a proposed loan. The application shall be in the form required  
10 by the authority and, in addition to the requirements listed in  
11 section 1750(c), shall include the following:

12 (1) A demonstration that the use of loan proceeds by the  
13 borrower will result in jobs being created or retained within  
14 this Commonwealth, and an estimate as to the number of  
15 projected new or retained employees as a result of the loan.

16 (2) A statement that the borrower's business is located  
17 within the commercial lending institution's service area and  
18 within this Commonwealth.

19 (3) A copy of the borrower's last two years of financial  
20 statements prepared or reported on by an independent  
21 certified public accountant.

22 (4) A statement describing the purpose of the loan, the  
23 requested amount of the loan, a copy of the commercial  
24 lending institution's commitment letter and applicable credit  
25 underwriting that supports the repayment of the loan, as well  
26 as the collateral and other guarantees offered by the  
27 borrower to support the loan.

28 (5) Certification that the borrower's business has been  
29 in existence for at least two years at the time of  
30 application.





1 that assumes the obligations under the Pennsylvania Industrial  
2 Development Authority bond indenture.

3 "Debt." Notes, instruments and other evidences of  
4 indebtedness or obligations which were issued prior to the  
5 effective date of this section for the same programs or similar  
6 programs to those described under Subchapter E (relating to  
7 programs) and under the following:

8 (1) The act of May 17, 1956 (1955 P.L.1609, No.537),  
9 known as the Pennsylvania Industrial Development Authority  
10 Act.

11 (2) The act of July 22, 1974 (P.L.598, No.206), known as  
12 the Pennsylvania Minority Business Development Authority Act.

13 (3) 12 Pa.C.S. Chs. 23 (relating to small business  
14 first) and 29 (relating to machinery and equipment loans).

15 "Debt instrument." Any trust instrument or indenture or  
16 other financial instrument pursuant to which debt was issued,  
17 incurred or secured.

18 "Prior programs." Except for the programs transferred under  
19 sections 1771.1 (relating to transfer from Pennsylvania  
20 Industrial Development Authority to Pennsylvania Business  
21 Development Authority) and 1773 (relating to transfer from  
22 Pennsylvania Minority Business Development Authority to  
23 Pennsylvania Business Development Authority), the same programs  
24 or programs similar to those described under Subchapter E  
25 (relating to programs) and established under the following:

26 (1) The former act of May 17, 1956 (1955 P.L.1609,  
27 No.537), known as the Pennsylvania Industrial Development  
28 Authority Act.

29 (2) The former act of July 22, 1974 (P.L.598, No.206),  
30 known as the Pennsylvania Minority Business Development

1 Authority Act.

2 (3) 12 Pa.C.S. former Chs. 23 (relating to small  
3 business first) and 29 (relating to machinery and equipment  
4 loans).

5 (4) Former sections 1552 (relating to First Industries  
6 Program) and 1553 (relating to Second Stage Loan Program).

7 "Program." The Pennsylvania Industrial Development Program.

8 The term shall include any similar program established by a  
9 successor to the Pennsylvania Business Development Authority  
10 that assumes the obligations under the Pennsylvania Industrial  
11 Development Authority bond indenture.

12 § 1771.1. Transfer from Pennsylvania Industrial Development  
13 Authority to Pennsylvania Business Development  
14 Authority.

15 (a) Designation of Pennsylvania Business Development  
16 Authority as successor to Pennsylvania Industrial Development  
17 Authority.--The Pennsylvania Business Development Authority, as  
18 a public instrumentality of the Commonwealth, shall be and is  
19 designated as successor to Pennsylvania Industrial Development  
20 Authority. The separate existence of the Pennsylvania Industrial  
21 Development Authority shall cease.

22 (b) Transfer of assets and liabilities of Pennsylvania  
23 Industrial Development Authority.--The following shall occur:

24 (1) The following shall be taken and deemed to be  
25 transferred to and vested in the Pennsylvania Business  
26 Development Authority, subject to any pledge in favor of the  
27 holders of bonds:

28 (i) All of the real, personal and mixed property and  
29 all interests in the property of the Pennsylvania  
30 Industrial Development Authority, including loans to

1 industrial development agencies and property acquired as  
2 a result of foreclosures or in lieu of foreclosures of  
3 mortgages securing the loans.

4 (ii) Any debts or amount due to the Pennsylvania  
5 Industrial Development Authority.

6 (iii) The Pennsylvania Industrial Development  
7 Authority's right, title and interest in and to revenues  
8 pledged to secure bonds, the interests of the  
9 Pennsylvania Industrial Development Authority under trust  
10 instruments securing its bonds, including the right to  
11 issue obligations pursuant to and secured by the  
12 instruments, sinking funds on deposit and all funds  
13 deposited under trust instruments, leaseholds and rights  
14 and deposits under the trust instruments.

15 (iv) Rights under interest rate exchange agreements  
16 and other financial instruments.

17 (v) Appropriations.

18 (vi) All other rights and assets of the Pennsylvania  
19 Industrial Development Authority of any nature.

20 (2) (i) The Pennsylvania Business Development Authority  
21 shall succeed to, assume and become liable for all  
22 liabilities and obligations of the Pennsylvania  
23 Industrial Development Authority, including the bonds and  
24 the Pennsylvania Industrial Development Authority bond  
25 indenture, obligations under interest rate exchange  
26 agreements and other financial instruments, contracts for  
27 purchase of goods or services and other liabilities of  
28 any nature.

29 (ii) The liabilities and obligations under subparagraph

30 (i) shall be subject to the same limitations as were

1 applicable to the Pennsylvania Industrial Development  
2 Authority prior to the transfer of assets and liabilities,  
3 including limitations as to payment source, pledges,  
4 assignments, liens, charges, terms and conditions.

5 (iii) The transfer of assets and liabilities to the  
6 Pennsylvania Business Development Authority as successor are  
7 assumed by the Pennsylvania Business Development Authority  
8 and shall not impair the rights or the security of holders of  
9 bonds or other creditors, persons dealing with Pennsylvania  
10 Industrial Development Authority, liens upon the property of  
11 Pennsylvania Industrial Development Authority or persons  
12 holding claims against Pennsylvania Industrial Development  
13 Authority.

14 (iv) Any claim existing or action or proceeding pending  
15 by or against the Pennsylvania Industrial Development  
16 Authority shall be prosecuted to judgment as if the transfer  
17 had not taken place or the Pennsylvania Business Development  
18 Authority may be proceeded against or substituted in its  
19 place.

20 (c) Rights and powers.--

21 (1) Nothing under this chapter shall alter or limit the  
22 rights and powers vested in the Pennsylvania Business  
23 Development Authority as successor to the Pennsylvania  
24 Industrial Development Authority or otherwise created under  
25 the act of May 17, 1956 (1955 P.L.1609, No.537), known as the  
26 Pennsylvania Industrial Development Authority Act, in any  
27 manner inconsistent with the obligations of the Pennsylvania  
28 Industrial Development Authority and, after the effective  
29 date of this section, the Pennsylvania Business Development  
30 Authority, to obligees of the Pennsylvania Industrial

1 Development Authority until all bonds issued by the  
2 Pennsylvania Industrial Development Authority, together with  
3 the interest on the bonds, are fully paid and discharged.

4 (2) Nothing under this chapter shall authorize personal  
5 recourse for any claim based on bonds or trust instruments  
6 securing the bonds or trust instruments, against any member,  
7 officer or employee of the Pennsylvania Industrial  
8 Development Authority, either directly or through the  
9 Pennsylvania Industrial Development Authority or the  
10 Pennsylvania Business Development Authority under any  
11 constitutional provision, statute or rule of law or by the  
12 enforcement of any assessment or penalty or otherwise.

13 (d) Pennsylvania Industrial Development Account and  
14 Program.--

15 (1) The provisions of this chapter relating to the  
16 account and the program shall apply to the assets and  
17 revenues of the Pennsylvania Industrial Development Authority  
18 transferring to the Pennsylvania Business Development  
19 Authority as successor in addition to the assets and revenues  
20 arising from the continuing program subsequent to the  
21 transfer.

22 (2) The pledge made by the trust instruments securing  
23 the Pennsylvania Industrial Development Authority bonds shall  
24 apply to revenues of the Pennsylvania Business Development  
25 Authority from the program and to assets held in the account.  
26 No withdrawals from the account may be made except in  
27 compliance with the trust instruments securing the  
28 Pennsylvania Industrial Development Authority bonds.

29 (e) Definition.--As used in this section, the term "bond"  
30 means any bond, note or other financial obligation of the

1 Pennsylvania Industrial Development Authority, including  
2 interest rate exchange agreements or other financial instruments  
3 related to bonds.

4 § 1772. Transfer from Commonwealth Financing Authority to the  
5 Pennsylvania Business Development Authority for the  
6 First Industries Program and Second Stage Loan  
7 Guarantee Program.

8 On the effective date of this chapter, the trust accounts  
9 established by the Commonwealth Financing Authority under  
10 sections 1541 (relating to trust accounts) and 1542(b) (relating  
11 to revolving loan program accounts) for the First Industries  
12 Program and the Second Stage Loan Guarantee Program shall be  
13 transferred to and vested in the authority without further act  
14 or deed.

15 § 1773. Transfer from Pennsylvania Minority Business  
16 Development Authority to Pennsylvania Business  
17 Development Authority.

18 (a) Designation of Pennsylvania Business Development  
19 Authority as successor to the Pennsylvania Minority Business  
20 Development Authority.--The Pennsylvania Business Development  
21 Authority, as a public instrumentality of the Commonwealth,  
22 shall be and is designated as successor to the Pennsylvania  
23 Minority Business Development Authority. The separate existence  
24 of the Pennsylvania Minority Business Development Authority  
25 shall cease.

26 (b) Transfer of assets and liabilities of the Pennsylvania  
27 Minority Business Development Authority.--The following shall  
28 occur:

29 (1) The following shall be taken and deemed to be  
30 transferred to and vested in the Pennsylvania Business

1 Development Authority, subject to any pledge in favor of the  
2 holders of bonds:

3 (i) All of the real, personal and mixed property and  
4 all interests in the property of the Pennsylvania  
5 Minority Business Development Authority, including loans  
6 and other debts owing to the Pennsylvania Minority  
7 Business Development Authority and amounts due to the  
8 Pennsylvania Minority Business Development Authority  
9 under the loans and debts.

10 (ii) The right, title and interest of the  
11 Pennsylvania Minority Business Development Authority  
12 under bond indentures, including all revenues pledged as  
13 security for the right, title and interest and the right  
14 to issue obligations pursuant to and secured by the bond  
15 indentures, sinking funds on deposit and all funds  
16 deposited under bond indentures, leaseholds and rights  
17 and deposits under bond indentures.

18 (iii) Appropriations.

19 (iv) All other rights and assets of the Pennsylvania  
20 Minority Business Development Authority.

21 (2) (i) The Pennsylvania Business Development Authority  
22 shall succeed to, assume and become liable for all  
23 liabilities and obligations of the Pennsylvania Minority  
24 Business Development Authority, including the bonds, bond  
25 indentures, contracts for purchase of goods or services  
26 and other liabilities.

27 (ii) The liabilities and obligations under  
28 subparagraph (i) shall be subject to the same limitations  
29 as were applicable to the Pennsylvania Minority Business  
30 Development Authority prior to the transfer of assets and

1 liabilities, including limitations as to payment source,  
2 pledges, assignments, liens, charges, terms and  
3 conditions.

4 (iii) The transfer of assets and liabilities to the  
5 Pennsylvania Business Development Authority as successor  
6 are assumed by the Pennsylvania Business Development  
7 Authority and shall not impair the rights or the security  
8 of holders of bonds or other creditors of the  
9 Pennsylvania Minority Business Development Authority,  
10 persons dealing with the Pennsylvania Minority Business  
11 Development Authority, liens upon the property of the  
12 Pennsylvania Minority Business Development Authority or  
13 persons holding claims against the Pennsylvania Minority  
14 Business Development Authority.

15 (iv) Any claim existing or action or proceeding  
16 pending by or against the Pennsylvania Minority Business  
17 Development Authority shall be prosecuted to judgment as  
18 if the transfer had not taken place or the Pennsylvania  
19 Business Development Authority may be proceeded against  
20 or substituted in its place.

21 (c) Rights and powers.--

22 (1) Nothing under this chapter shall alter or limit the  
23 rights and powers vested in the Pennsylvania Business  
24 Development Authority as successor to the Pennsylvania  
25 Minority Business Development Authority or otherwise created  
26 by the act of July 22, 1974 (P.L.598, No.206), known as the  
27 Pennsylvania Minority Business Development Authority Act,  
28 and, after the effective date of this section, the  
29 Pennsylvania Business Development Authority, to obligees of  
30 the Pennsylvania Minority Business Development Authority



1 until all bonds issued by the Pennsylvania Minority Business  
2 Development Authority, together with the interest on the  
3 bonds, are fully paid and discharged.

4 (2) Nothing under this chapter shall authorize personal  
5 recourse for any claim based on any obligation of the  
6 Pennsylvania Minority Business Development Authority,  
7 including its bonds or bond indentures, against any member,  
8 officer or employee of the Pennsylvania Minority Business  
9 Development Authority either directly or through the  
10 Pennsylvania Minority Business Development Authority or the  
11 Pennsylvania Business Development Authority under any  
12 constitutional provision, statute or rule of law or by the  
13 enforcement of any assessment or penalty or otherwise.

14 (d) Definition.--As used in this section, the term "bond"  
15 means bonds, notes and other evidences of indebtedness or  
16 obligations which the Pennsylvania Minority Business Development  
17 Authority issued under the act of July 22, 1974 (P.L.598,  
18 No.206), known as the Pennsylvania Minority Business Development  
19 Authority Act.

20 § 1774. Successorship and transfer of assets and liabilities.

21 (a) Transfer of assets and liabilities of prior programs.--  
22 The following shall occur:

23 (1) The following shall be taken and deemed to be  
24 transferred to and vested in the Pennsylvania Business  
25 Development Authority, subject to any pledge in favor of the  
26 holders of debt:

27 (i) All of the real, personal and mixed property and  
28 all interests in the property of the prior programs,  
29 including loans and other debts owing to the prior  
30 programs and amounts due to the prior programs under the

1           loans and other debts.

2           (ii) The right, title and interest of the prior  
3 programs under debt instruments, including all revenues  
4 pledged as security for the right, title and interest and  
5 the right to issue obligations pursuant to and secured by  
6 the debt instruments, sinking funds on deposit and all  
7 funds deposited under debt instruments, leaseholds and  
8 rights and deposits under the debt instruments.

9           (iii) Appropriations made with respect to the prior  
10 programs.

11           (iv) All other rights and assets of the prior  
12 programs.

13           (2) (i) The Pennsylvania Business Development Authority  
14 shall succeed to, assume and become liable for all  
15 liabilities and obligations of the prior programs,  
16 including the debt, debt instruments, contracts for  
17 purchase of goods or services, and other liabilities.

18           (ii) The liabilities and obligations under  
19 subparagraph (i) shall be subject to the same limitations  
20 as were applicable to the prior programs prior to the  
21 transfer of assets and liabilities, including limitations  
22 as to payment source, pledges, assignments, liens,  
23 charges, terms and conditions.

24           (iii) The transfer of assets and liabilities to the  
25 Pennsylvania Business Development Authority as successor  
26 shall not impair the rights or the security of holders of  
27 debt or other creditors of the prior programs, persons  
28 dealing with the prior programs, liens upon the property  
29 of the prior programs or persons holding claims against  
30 the prior programs, all of which are assumed by the

1 Pennsylvania Business Development Authority.

2 (iv) Any claim existing or action or proceeding  
3 pending by or against the prior programs shall be  
4 prosecuted to judgment as if the transfer had not taken  
5 place or the Pennsylvania Business Development Authority  
6 may be proceeded against or substituted in its place.

7 (b) Rights and powers.--

8 (1) Nothing under this chapter shall alter or limit the  
9 rights and powers vested in the Pennsylvania Business  
10 Development Authority as successor to the prior programs or  
11 otherwise created by the acts under which the prior programs  
12 were initiated in any manner inconsistent with the  
13 obligations of the prior programs and, after the effective  
14 date of this section, the Pennsylvania Business Development  
15 Authority, to obligees of the prior programs until all debt  
16 at any time issued by the prior programs, together with the  
17 interest on the debt, are fully paid and discharged.

18 (2) Nothing under this chapter shall authorize personal  
19 recourse for any claim based on any obligation of the prior  
20 programs, including without limitation its debt or debt  
21 instruments, against any member, officer or employee of the  
22 prior programs whether directly or through the prior programs  
23 or the Pennsylvania Business Development Authority under any  
24 constitutional provision, statute or rule of law or by the  
25 enforcement of any assessment or penalty or otherwise.

26 Section 5. Any money that has been allocated or appropriated  
27 and has been expended prior to the effective date of this  
28 section for the same programs or similar programs to those  
29 described under 64 Pa.C.S. Ch. 17 Subch. E shall be deducted  
30 from the corresponding allocation or appropriation under 64

1 Pa.C.S. Ch. 17.

2 Section 6. Repeals are as follows:

3 (1) The General Assembly declares that the repeal under  
4 paragraph (2) is necessary to effectuate the addition of the  
5 following provisions of 64 Pa.C.S.:

- 6 (i) Ch. 17 Subch. C.
- 7 (ii) Section 1731(4).
- 8 (iii) Section 1734(a).
- 9 (iv) Section 1754.
- 10 (v) Section 1771.1.

11 (2) The act of May 17, 1956 (1955 P.L.1609, No.537),  
12 known as the Pennsylvania Industrial Development Authority  
13 Act, is repealed.

14 (3) The General Assembly declares that the repeal under  
15 paragraph (4) is necessary to effectuate the addition of the  
16 following provisions of 64 Pa.C.S.:

- 17 (i) Ch. 17 Subch C.
- 18 (ii) Section 1731(6).
- 19 (iii) Section 1756.
- 20 (iv) Section 1773.

21 (4) The act of July 22, 1974 (P.L.598, No.206), known as  
22 the Pennsylvania Minority Business Development Authority Act,  
23 is repealed.

24 Section 7. This act continues repealed provisions of the  
25 Pennsylvania Consolidated Statutes as follows:

26 (1) The addition of 64 Pa.C.S. §§ 1731(1) and 1751 is a  
27 continuation of 12 Pa.C.S. Ch. 23. Except as otherwise  
28 provided in 64 Pa.C.S. § 1731(1) or 1751, all activities  
29 initiated under 12 Pa.C.S. Ch. 23 shall continue and remain  
30 in full force and effect and may be completed under 64

1 Pa.C.S. §§ 1731(1) and 1751. Orders, regulations, rules and  
2 decisions which were made under 12 Pa.C.S. Ch. 23 and which  
3 are in effect on the effective date of section 1 {12 Pa.C.S.  
4 Ch. 23} of this act shall remain in full force and effect  
5 until revoked, vacated or modified under 64 Pa.C.S. § 1731(1)  
6 or 1751. Contracts, obligations and collective bargaining  
7 agreements entered into under 12 Pa.C.S. Ch. 23 are not  
8 affected nor impaired by the repeal of 12 Pa.C.S. Ch. 23.

9 (2) The addition of 64 Pa.C.S. §§ 1731(5) and 1755 is a  
10 continuation of 12 Pa.C.S. Ch. 29. Except as otherwise  
11 provided in 64 Pa.C.S. § 1731(5) or 1755, all activities  
12 initiated under 12 Pa.C.S. Ch. 29 shall continue and remain  
13 in full force and effect and may be completed under 64  
14 Pa.C.S. §§ 1731(5) and 1755. Orders, regulations, rules and  
15 decisions which were made under the 12 Pa.C.S. Ch. 29 and  
16 which are in effect on the effective date of section 1 {12  
17 Pa.C.S. Ch. 29} of this act shall remain in full force and  
18 effect until revoked, vacated or modified under 64 Pa.C.S. §  
19 1731(5) or 1755. Contracts, obligations and collective  
20 bargaining agreements entered into under 12 Pa.C.S. Ch. 29  
21 are not affected nor impaired by the repeal of 12 Pa.C.S. Ch.  
22 29.

23 (3) The addition of 64 Pa.C.S. §§ 1731(7), 1757 and 1772  
24 is a continuation of 64 Pa.C.S. §§ 1542(b) and 1552. Except  
25 as otherwise provided in 64 Pa.C.S. § 1731(7), 1757 or 1772,  
26 all activities initiated under 64 Pa.C.S. §§ 1542(b) and 1552  
27 shall continue and remain in full force and effect and may be  
28 completed under 64 Pa.C.S. §§ 1731(7), 1757 and 1772. Orders,  
29 regulations, rules and decisions which were made under 64  
30 Pa.C.S. §§ 1542(b) and 1552 and which are in effect on the

1 effective date of sections 2 and 3 {64 Pa.C.S. §§ 1542(b) and  
2 1552} of this act shall remain in full force and effect until  
3 revoked, vacated or modified under 64 Pa.C.S. § 1731(7), 1757  
4 or 1772. Contracts, obligations and collective bargaining  
5 agreements entered into under 64 Pa.C.S. §§ 1542(b) and 1552  
6 are not affected nor impaired by the repeal of 64 Pa.C.S. §§  
7 1542(b) and 1552.

8 (4) The addition of 64 Pa.C.S. §§ 1731(8), 1758 and 1772  
9 is a continuation of 64 Pa.C.S. § 1553. Except as otherwise  
10 provided in 64 Pa.C.S. § 1731(8), 1758 or 1772, all  
11 activities initiated under 64 Pa.C.S. § 1553 shall continue  
12 and remain in full force and effect and may be completed  
13 under 64 Pa.C.S. §§ 1731(8), 1758 and 1772. Orders,  
14 regulations, rules and decisions which were made under 64  
15 Pa.C.S. § 1553 and which are in effect on the effective date  
16 of section 3.1 {64 Pa.C.S. § 1553} of this act shall remain  
17 in full force and effect until revoked, vacated or modified  
18 under 64 Pa.C.S. § 1731(7), 1757 or 1772. Contracts,  
19 obligations and collective bargaining agreements entered into  
20 under 64 Pa.C.S. § 1553 are not affected nor impaired by the  
21 repeal of 64 Pa.C.S. § 1553.

22 Section 8. The addition of 64 Pa.C.S. Ch. 17 Subch. C is a  
23 continuation of the act of May 17, 1956 (1955 P.L.1609, No.537),  
24 known as the Pennsylvania Industrial Development Authority Act,  
25 and the act of July 22, 1974 (P.L.598, No.206), known as the  
26 Pennsylvania Minority Business Development Authority Act. The  
27 following apply:

28 (1) Except as otherwise provided in 64 Pa.C.S. Ch. 17  
29 Subch. C, all activities related to bonds initiated under the  
30 Pennsylvania Industrial Development Authority Act or the

1 Pennsylvania Minority Business Development Authority Act  
2 shall continue and remain in full force and effect and may be  
3 completed under 64 Pa.C.S. Ch. 17 Subch. C. Orders,  
4 regulations, rules and decisions which were related to bonds,  
5 which were made under the Pennsylvania Industrial Development  
6 Authority Act or the Pennsylvania Minority Business  
7 Development Authority Act and which are in effect on the  
8 effective date of section 7 of this act shall remain in full  
9 force and effect until revoked, vacated or modified under 64  
10 Pa.C.S. Ch. 17 Subch. C. Contracts, obligations and  
11 collective bargaining agreements which are related to bonds  
12 and which were entered into under the Pennsylvania Industrial  
13 Development Authority Act or the Pennsylvania Minority  
14 Business Development Authority Act are not affected nor  
15 impaired by the repeal of the Pennsylvania Industrial  
16 Development Authority Act or the Pennsylvania Minority  
17 Business Development Authority Act.

18 (2) Any difference in language between 64 Pa.C.S. Ch. 17  
19 Subch. C and the Pennsylvania Industrial Development  
20 Authority Act or the Pennsylvania Minority Business  
21 Development Authority Act is intended only to conform to the  
22 style of the Pennsylvania Consolidated Statutes and is not  
23 intended to change or affect the legislative intent, judicial  
24 construction or administration and implementation of the  
25 Pennsylvania Industrial Development Authority Act or the  
26 Pennsylvania Minority Business Development Authority Act.

27 Section 9. The addition of 64 Pa.C.S. §§ 1731(4), 1734(a),  
28 1754 and 1771.1 is a continuation of the act of May 17, 1956  
29 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial  
30 Development Authority Act. The following apply:

1           (1) Except as otherwise provided in 64 Pa.C.S. §  
2 1731(4), 1734(a), 1754 or 1771.1, all activities initiated  
3 under the Pennsylvania Industrial Development Authority Act  
4 shall continue and remain in full force and effect and may be  
5 completed under 64 Pa.C.S. § 1731(4), 1734(a), 1754 or  
6 1771.1. Orders, regulations, rules and decisions which were  
7 made under the Pennsylvania Industrial Development Authority  
8 Act and which are in effect on the effective date of section  
9 7(2) of this act shall remain in full force and effect until  
10 revoked, vacated or modified under 64 Pa.C.S. § 1731(4),  
11 1734(a), 1754 or 1771.1. Contracts, obligations and  
12 collective bargaining agreements entered into under the  
13 Pennsylvania Industrial Development Authority Act are not  
14 affected nor impaired by the repeal of the Pennsylvania  
15 Industrial Development Authority Act.

16           (2) Any difference in language between 64 Pa.C.S. §  
17 1731(4), 1734(a), 1754 or 1771.1 and the Pennsylvania  
18 Industrial Development Authority Act is intended only to  
19 conform to the style of the Pennsylvania Consolidated  
20 Statutes and is not intended to change or affect the  
21 legislative intent, judicial construction or administration  
22 and implementation of the Pennsylvania Industrial Development  
23 Authority Act.

24       Section 10. The addition of 64 Pa.C.S. §§ 1731(6), 1756 and  
25 1773 is a continuation of the act of July 22, 1974 (P.L.598,  
26 No.206), known as the Pennsylvania Minority Business Development  
27 Authority Act. The following apply:

28           (1) Except as otherwise provided in 64 Pa.C.S. §  
29 1731(6), 1756 or 1773, all activities initiated under the  
30 Pennsylvania Minority Business Development Authority Act



1 shall continue and remain in full force and effect and may be  
2 completed under 64 Pa.C.S. §§ 1731(6), 1756 and 1773. Orders,  
3 regulations, rules and decisions which were made under the  
4 Pennsylvania Minority Business Development Authority Act and  
5 which are in effect on the effective date of section 7(4) of  
6 this act shall remain in full force and effect until revoked,  
7 vacated or modified under 64 Pa.C.S. §§ 1731(6), 1756 and  
8 1773. Contracts, obligations and collective bargaining  
9 agreements entered into under the Pennsylvania Minority  
10 Business Development Authority Act are not affected nor  
11 impaired by the repeal of the Pennsylvania Minority Business  
12 Development Authority Act.

13 (2) Any difference in language between 64 Pa.C.S. §§  
14 1731(6), 1756 and 1773 and the Pennsylvania Minority Business  
15 Development Authority Act is intended only to conform to the  
16 style of the Pennsylvania Consolidated Statutes and is not  
17 intended to change or affect the legislative intent, judicial  
18 construction or administration and implementation of the  
19 Pennsylvania Minority Business Development Authority Act.  
20 Section 11. This act shall take effect in 60 days.