

No. 166

AN ACT

HB 958

Amending the act of May 17, 1956 (P.L.1609, No.537), entitled "An act to promote the welfare of the people of the Commonwealth by the reduction of unemployment in certain areas of the Commonwealth determined to be critical economic areas; providing for the establishment of industrial development projects in such areas; creating The Pennsylvania Industrial Development Authority as a body corporate and politic with power to allocate funds for and make secured loans to industrial development agencies for the payment of a part of the cost of industrial development projects in critical economic areas; authorizing the Authority to enter into agreements with the Government of the United States or any Federal agency or industrial development agency; empowering the Authority to take title to, sell, convey and lease industrial development projects where necessary to protect loans made by the Pennsylvania Industrial Development Authority on industrial development projects; providing that no debt of the Commonwealth, its municipalities or political subdivisions shall be incurred in the exercise of any powers granted by this act; and providing for the examination of the accounts and affairs of the Authority; and making an appropriation," redefining "municipality" and making an editorial correction.

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

Section 1. Clause (j) of section 3, act of May 17, 1956 (P.L.1609, No.537), known as the "Pennsylvania Industrial Development Authority Act," is amended to read:

Section 3. Definitions.—The following terms, whenever used or referred to in this act, shall have the following meanings, except in those instances where the context clearly indicates otherwise:

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(j) The term "municipality" shall mean any city, borough, town or township of the Commonwealth of Pennsylvania, *each of which political subdivisions are separate incorporated municipalities of the Commonwealth for the purposes of this act.*

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Section 2. Section 6 of the act, amended July 10, 1963 (P.L.221, No.125), May 5, 1965 (P.L.42, No.37), October 5, 1967 (P.L.323, No.142), June 16, 1972 (P.L.475, No.153), and September 27, 1973 (P.L.257, No.73), is reenacted and amended to read:

Section 6. Powers of the Authority; Loans to Industrial Development Agencies.—When it has been determined by the Authority upon application of an industrial development agency and hearing thereon in the manner hereinafter provided, that the establishment of a particular industrial development project of such industrial development agency in a critical economic area has accomplished or will accomplish the public purposes of this act, the

Authority may contract to loan such industrial development agency an amount not in excess of the percentage of the cost of such industrial development project, as established or to be established as hereinafter set forth, subject, however, to the following conditions:

(a) Industrial development projects to be established:

(1) If the industrial development project is exclusively a research and development facility other than research and development of pollution control technology, the Authority may, in each class of critical economic area, contract to loan the industrial development agency (45%) of the cost of such industrial development project if it has determined that the industrial development agency holds funds or property in an amount or value equal to not less than (5%) of the cost of establishing the industrial development project, which funds or property are available for and shall be applied to the establishment of such project. If the industrial development project is exclusively a research and development facility for technology concerning pollution control, the Authority may contract to loan the industrial development agency in critical economic area A an amount not in excess of (55%) and in a critical economic area B or a critical economic area C an amount not in excess of (50%) of the cost of the industrial development project: Provided, however, That in each such instance, the Authority has determined that the industrial development agency holds funds or property in an amount or value equal to not less than (5%) of the cost of establishing the industrial development project, which funds or property are available for and shall be applied to the establishment of such project.

(2) If the industrial development project is any other type of industrial development project than exclusively a research and development facility, the Authority may, in critical economic area A contract to loan the industrial development agency an amount not in excess of (40%) of the cost of such industrial development project if it has determined that the industrial development agency holds funds or property in an amount or value equal to not less than (10%) of the cost of establishing the industrial development project, which funds or property are available for and shall be applied to establishment of such project.

(3) If the industrial development project is any other type of industrial development project than exclusively a research and development facility, the Authority may, in critical economic areas B and C, contract to loan the industrial development agency an amount not in excess of (30%) of the cost of such industrial development project if it has determined that the industrial development agency holds funds or property in an amount or value equal to not less than (20%) of the cost of establishing the industrial development project, which funds or property are available for or shall be applied to the establishment of such project.

(4) Prior to the making of any loan under this subsection (a), the Authority shall have determined that the industrial development agency has obtained from other independent and responsible sources, such as banks and insurance companies or otherwise, a firm commitment for all other funds, over and above the loan of the Authority and such funds or property as the industrial development agency may hold, necessary for payment of all of the cost of establishing the industrial development project, and that the sum of all these funds, together with the machinery and equipment to be provided by the responsible tenant or responsible buyer, is adequate for the completion and operation of the industrial development project.

(b) The Authority may, in critical economic areas A and B, contract to loan to an industrial development agency an amount not in excess of (40%) of the cost, and in critical economic area C, may contract to loan to an industrial development agency an amount not in excess of (30%) of the cost, of establishing an industrial development project established without prior Authority participation, if at the time of making such loan the Authority has determined:

(1) That in critical economic areas A and B, the industrial development agency has invested in the industrial development project funds or property in an amount or value equal to not less than (10%) of the cost of such industrial development project and all of the costs of establishing said industrial development project have been paid; and in a critical economic area C, the industrial development agency has invested in the industrial development project funds or property in an amount or value equal to not less than (20%) of the cost of such industrial development project and all costs of establishing said industrial development project have been paid. **[Provided, however, That in critical areas A, B or C, where an average of (8%) or more of the labor force has been unemployed for a period of three months or more, the Authority shall reduce the industrial development agency project percentage from (10%) to (5%) and where an average of (10%) or more of the labor force has been unemployed for a period of three months or more or where the unemployment is due to an unusual condition, the Authority shall remove the industrial development agency project percentage entirely. When the industrial development agency project percentage is reduced or removed, the share of the Authority shall be increased accordingly but not in excess of (50%) of the cost of the project.]**

(2) That the industrial development project is leased or sold to a responsible tenant or purchaser which has supplied the machinery and equipment necessary for the operation of the industrial development project and is occupying the same for the purposes intended.

(3) That neither the industrial development agency nor the responsible tenant or purchaser is in default under any of the agreements

entered into by them in respect of the financing and operation of the industrial development project.

(4) That there is sufficient income from the lease or agreement to purchase with the industrial tenant or industrial purchaser sufficient to insure the repayment of the loan of the Authority made pursuant to this subsection (b).

(5) The proceeds of the Authority loan to the industrial development agency made pursuant to this subsection (b) shall be used only to pay a part of the cost of establishing an industrial development project in furtherance of the public purposes of this act.

(c) The Authority may, in critical economic area A and area B, contract to loan to an industrial development agency in respect of an industrial development project in which the Authority heretofore participated an amount which, together with the prior loan of the Authority, is not in excess of (40%) of the cost of such industrial project, determined as of the time of the disbursement of the prior Authority loan, if at the time of making such loan under this subsection (c) the Authority has determined:

(1) That the industrial development agency has invested in the industrial development project funds or property in an amount or value equal to not less than (20%) of the cost of such industrial development project and all of the costs of establishing such industrial development project have been paid.

(2) That the loan to the industrial development agency will not reduce the present investment of the industrial development agency in the industrial development project to an amount which is less than (10%) of the cost of establishing the industrial development project, such percentage to be determined as of the time of the disbursement of the prior Authority loan.

(3) That the responsible tenant or buyer occupying said industrial development project is willing to enter into such agreements, mortgages or other security instruments as the Authority may deem necessary to secure such additional loan.

(4) That there is sufficient income from the lease or agreement to purchase with the industrial tenant or industrial purchaser sufficient to insure the repayment of the loan of the Authority made pursuant to this subsection (c).

(5) That neither the industrial development agency nor the responsible tenant or purchaser is in default under any of the agreements entered into by them in respect of the financing and operation of the industrial development project.

(6) That the proceeds of the Authority loan to the industrial development agency made pursuant to this subsection (c) shall be used only to pay a part of the cost of establishing a specific industrial development project in furtherance of the public purposes of this act.

(d) Where a contract to loan to an industrial development agency is

to be made under the provisions of subsections (a) and (b) of this section, the following shall apply: that, in critical areas A, B or C, where an average of (8%) or more of the labor force has been unemployed for a period of three months or more, the Authority shall reduce the industrial development agency project percentage from (10%) to (5%) and where an average of (10%) or more of the labor force has been unemployed for a period of three months or more or where the unemployment is due to an unusual condition, the Authority shall remove the industrial development agency project percentage entirely. When the industrial development agency project percentage is reduced or removed, the share of the Authority shall be increased accordingly but not in excess of (50%) of the cost of the project.

(e) Any such loan of the Authority shall be for such period of time and shall bear interest at such rate as shall be determined by the Authority and shall be secured by bond or note of the industrial development agency and by mortgage on the industrial development project for which such loan was made, such mortgage to be second and subordinate only to the mortgage securing the first lien obligation issued to secure the commitment of funds from the aforesaid independent and responsible sources and used in the financing of the industrial development project.

Moneys so loaned by the Authority to industrial development agencies shall be withdrawn from the Industrial Development Fund and paid over to the industrial development agency in such manner as shall be provided and prescribed by the rules and regulations of the Authority.

All payments of interest on said loans and the principal thereof shall be deposited by the Authority in the Industrial Development Fund.

Loans by the Authority to an industrial development agency for an industrial development project shall be made only in the manner and to the extent as in this section six provided, except, however, in those instances wherein an agency of the Federal government participates in the financing of an industrial development project by loan, grant or otherwise of Federal funds. When any Federal agency does so participate the Authority may adjust the required ratios of financial participation by the industrial development agency, the source of independent funds, and the Authority in such manner as to insure the maximum benefit available to the industrial development agency, the Authority, or both, by the participation of the Federal Agency.

Where any Federal agency participating in the financing of an industrial development project is not permitted to take as security for such participation a mortgage the lien of which is junior to the mortgage of the Authority, the Authority shall in such instances be authorized to take as security for its loan to the industrial development agency a mortgage junior in lien to that of the Federal agency.

Before any loan is approved by the Authority, the responsible tenant

or purchaser must certify to the Authority that it has not been cited by a governmental agency for causing pollution in the Commonwealth, or if it has been so cited, that it is embarked on a specific program for eliminating the cause of the citation. The responsible tenant or purchaser must also certify to the Authority that the proposed project would be designed so as not to cause pollution in violation of existing standards.

In the event of the imposition of any civil or criminal penalty on a specific industrial development project hereinafter approved, resulting from the violation of any law or regulation relating to environmental pollution in the Commonwealth, the responsible tenant or purchaser shall, at the request of the Authority, be required to either show evidence of having entered into an agreement with the appropriate governmental agency providing for the required abatement, or if the violation has been appealed to the courts, evidence of having complied with a finally adjudicated decision of a court of law relating to the violation. If the responsible tenant or purchaser shall fail to show such evidence, the Pennsylvania Industrial Development Authority together with the Environmental Quality Board of the Department of Environmental Resources may at their discretion take such action as they deem appropriate with regard to the project loan.

APPROVED—The 19th day of December, A. D. 1975.

MILTON J. SHAPP