

## No. 1987-48

## AN ACT

## HB 2

Amending the act of August 23, 1967 (P.L.251, No.102), entitled, as amended, "An act providing for the incorporation as public instrumentalities of the Commonwealth and as bodies corporate and politic of industrial and commercial development authorities for municipalities, counties and townships; prescribing the rights, powers and duties of such authorities hereafter incorporated; authorizing such authorities to acquire, by gift or purchase, to construct, improve and maintain industrial, specialized, or commercial development projects including projects for the elimination or prevention of blight and the control of air and water pollution, and to borrow money and issue bonds therefor; providing for the payment of such bonds and giving security therefor, and prescribing the rights of the holders of such bonds; authorizing the lease or sale of industrial, specialized, or commercial development projects to industrial, specialized, or commercial enterprises; authorizing any county, municipality or township to transfer or convey to such authorities, any facilities or property available for industrial, specialized, or commercial development projects; exempting the property and securities of such authorities from taxation; authorizing such authorities to enter into contracts with and to accept grants from the Federal Government or any agency thereof; and providing for approval by the Secretary of Commerce of the proceedings relating to industrial, specialized, or commercial development projects of such authorities," creating the Pennsylvania Economic Development Financing Authority as a body corporate and politic with power to borrow money and issue bonds and other evidences of indebtedness; and providing for powers and duties of the Pennsylvania Economic Development Financing Authority.

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

Section 1. The definitions of "authority," "board" and "bonds" in section 3 of the act of August 23, 1967 (P.L.251, No.102), known as the Industrial and Commercial Development Authority Law, amended December 19, 1975 (P.L.576, No.165), are amended and the section is amended by adding definitions to read:

Section 3. Definitions.—As used in this act:

\* \* \*

"Authority" or "industrial and commercial development authority" means a public instrumentality of the Commonwealth and a body politic and corporate, created pursuant to *section 4 of this act*.

"Board" means the governing body of an authority *created pursuant to section 4 of this act*.

"Bonds" means and includes the notes, bonds, refunding notes and bonds and other evidence of indebtedness or obligations which each authority is authorized to issue pursuant to section 6(b)(10) of this act *or which the financing authority is authorized to issue pursuant to section 6.3 of this act*.

\* \* \*

"Financing authority" means the *Pennsylvania Economic Development Financing Authority created by section 6.1 of this act*.

**“Financing board” means the governing body of the financing authority.**

\* \* \*

Section 2. Section 6(a) and (d) of the act, amended December 19, 1975 (P.L.576, No.165), are amended to read:

Section 6. Purposes and Powers; General.—(a) Every **industrial and commercial development** authority incorporated under this act shall be a public instrumentality of the Commonwealth and a public body corporate and politic, and shall be for the purpose of acquiring, holding, constructing, improving, maintaining, owning, financing and leasing, either in the capacity of lessor or lessee, industrial, specialized or commercial development projects. In the event of default by an occupant, an authority may, in its discretion, do any and all acts necessary or convenient to protect the holders of any bonds issued to establish such project or to maintain and preserve the project pending the remedying of such default or defaults or the obtaining of a new occupant.

\* \* \*

(d) An authority created [hereunder] **under section 4 of this act** shall have no power to:

(1) Construct or finance or aid in the construction or financing of an industrial, specialized, or commercial development project which shall cause the removal of a manufacturing, industrial, specialized, commercial enterprise, plant, facility or establishment from one area of the Commonwealth of Pennsylvania to another area of the Commonwealth.

(2) Acquire existing industrial, specialized, or commercial development projects under circumstances which would be primarily for the purpose of directly or indirectly refinancing the obligations of or providing working capital or other funds for any industrial, specialized, or commercial enterprise or any parent, subsidiary, affiliate or shareholder thereof, which enterprise, or any parent, subsidiary, affiliate or shareholder thereof, would thereafter continue to occupy or utilize said project; however, this limitation shall not apply to refinancing in order to improve an existing project now financed by the authority or by any authority or nonprofit corporation heretofore recognized as agency or an instrumentality of the Commonwealth or any municipality thereof.

(3) Enter into any agreement to finance the acquisition or construction of an industrial development project in excess of the cost of the project.

(4) Finance machinery or equipment except in conjunction with the construction of a new, or the improvement of an existing industrial, specialized, or commercial development project, but such prohibition shall not relate to the financing of pollution control facilities; or

(5) Engage in business, trade or commerce for a profit as lessee of a project, or otherwise.

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

**Section 6.1. Pennsylvania Economic Development Financing Authority; Board of Directors.—(a) There is hereby created a body corporate and politic, with corporate succession, to be known as the “Pennsylvania Economic Development Financing Authority.”**

**(b) The financing authority shall be governed and all of its corporate powers exercised by a board of directors which shall be composed of the following individuals:**

**(1) Seven members to be appointed by the Governor, with the advice and consent of the Senate, who shall represent the general public and the public interest. The members initially appointed shall serve for terms of two, three and four years, respectively, from the date of their appointment and until their respective successors shall be duly appointed and qualified, the term of each appointed member to be designated by the Governor at the time of his appointment. Initially, three members shall be appointed for terms of four years; two members shall be appointed for terms of three years; and two members shall be appointed for terms of two years. The terms of all of their successors shall be four years each, except that any person appointed to fill a vacancy shall serve only for the unexpired term, and any appointed member shall be eligible for reappointment.**

**(2) The Secretary of Commerce, or its successor agency, who will serve as chairman, or his designee.**

**(3) The Secretary of Labor and Industry or his designee.**

**(4) The Secretary of Community Affairs or his designee.**

**(5) The Secretary of Agriculture or his designee.**

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

**(c) The members of the financing board shall be entitled to no compensation for their services as members but shall be entitled to reimbursement for all necessary expenses incurred in connection with the performance of their duties as members.**

**(d) The financing board shall provide for the holding of regular and special meetings. A majority of the members of the financing board shall constitute a quorum for the transaction of any financing authority business. No vacancy on the financing board shall impair the right of a quorum of the members of the financing board to exercise the powers and perform the duties of the financing authority.**

**(e) All applicable State departments and agencies shall cooperate with and provide assistance to the financing board without financial reimbursement.**

**(f) The financing authority may be dissolved by law provided that the financing authority has no bonds or other debts or obligations outstanding or that provision has been made for the payment or retirement of all such bonds, debts and obligations. Upon the dissolution of the financing authority, all property, funds and assets of the financing authority shall be vested in the Commonwealth.**

**Section 6.2. Powers of the Financing Authority; General.—The financing authority, as a public corporation and governmental instrumentality exercising public powers of the Commonwealth, is hereby granted and shall have and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this act, including, but not limited to, the following powers:**

- (1) *To have existence until its existence shall be terminated by law.*
- (2) *To sue and be sued, implead and be impleaded, complain and defend in all courts.*
- (3) *To adopt, use and alter at will a corporate seal.*
- (4) *To make bylaws for the management and regulations of its internal affairs, and, subject to agreements with holders of its bonds, to make rules and regulations with respect to its operations, properties and facilities.*
- (5) *To appoint an executive director and any other officers, agents, and employes as it may require for the performance of its duties, and to prescribe their duties, fix their compensation, promote and discharge them within the limitations provided by law.*
- (6) *To make contracts of every name and nature, and to execute all instruments necessary or convenient for the carrying on of its business.*
- (7) *To borrow money and issue bonds and other evidences of indebtedness created thereby, to secure the payment of such bonds or other evidences of the indebtedness or any part thereof by pledge or assignment of all or any of the mortgages of the financing authority, its revenues and receipts therefrom or its revenues generally, and to provide for the rights of the lenders and holders thereof in accordance with the provisions of this act.*
- (8) *To sell mortgages and security interests at public or private sale, to negotiate modifications or alterations in mortgage and security interests, to foreclose on any mortgage or security interest in default or commence any action to protect or enforce any right conferred upon it by any law, mortgage, security agreement, contract or other agreement, to bid for and purchase property which was the subject of such mortgage or security interest at any foreclosure or at any other sale, to acquire or take possession of any such property, and to exercise any and all rights as provided by law for the benefit or protection of the financing authority or mortgage holders.*
- (9) *To collect fees and charges in connection with its loan commitments and servicing, including, but not limited to, reimbursement of costs of financing as the financing authority shall determine to be reasonable and as shall be approved by the financing authority.*
- (10) *To make and execute contracts for the servicing of mortgages acquired by the financing authority pursuant to this act, and to pay the reasonable value of services rendered to the financing authority pursuant to those contracts.*
- (11) *To accept gifts, grants, loans and other aid from the Federal Government, the Commonwealth or any political subdivision of the Commonwealth, or any person or corporation, foundation or legal entity, and to agree to and comply with any conditions attached to Federal and State financial assistance not inconsistent with the provisions of this act.*
- (12) *To invest moneys of the financing authority not required for immediate use, including proceeds from the sale of any bonds, in such manner as the financing board shall determine, subject to any agreement with bondholders stated in the authorizing resolution providing for the issuance of bonds.*

*(13) To procure insurance against any loss in connection with its programs, property and other assets.*

*(14) To engage the services of attorneys, accountants and financial experts and any other advisors, consultants and agents as may be necessary in its judgment, and to fix their compensation.*

*(15) Subject to any agreement with holders of its bonds, to obtain as security for payment of all or any part of the principal of and interest and premium on the bonds, lines of credit and letters of credit in any amounts and upon any terms as the bank may determine, and to pay any fees and expenses required in connection therewith.*

*(16) To adopt rules and regulations containing such restrictions as it may deem necessary or appropriate to effectuate the public purposes of this act.*

*(17) To do any act necessary or convenient to the exercise of the foregoing powers or reasonably implied therefrom.*

**Section 6.3. Financing Authority Indebtedness.**—*(a) The financing authority shall have the power and is hereby authorized to issue its limited obligation revenue bonds as in the judgment of the financing authority shall be necessary to provide sufficient funds for any series of related or unrelated projects authorized by an industrial and commercial development authority or a group of industrial and commercial development authorities for qualified industrial development projects. The financing authority is authorized and empowered to use the proceeds of any bonds issued for the making of loans, purchasing mortgages, security interests, or loan participations and paying all incidental expenses in connection therewith, paying expenses of authorizing and issuing the bonds, paying interest on the bonds until revenues thereof are available in sufficient amounts, and funding such reserves as the financing authority deems necessary and desirable. It is the intention of this section to provide an alternative source of financing for industrial and commercial development authorities.*

*(b) The financing authority, whenever it deems it expedient, shall have the power to refund or renew any bonds by the issuance of new bonds whether the bonds to be refunded or renewed have or have not matured. Refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded, the establishment or increase in reserves to secure or to pay the bonds or interest thereon and all other costs or expenses of the financing authority incident to and necessary to carry out the refunding or renewing of bonds.*

*(c) Bonds issued under this section shall not be a debt or liability of the Commonwealth of Pennsylvania or of any of its political subdivisions other than the financing authority and shall not create or constitute any indebtedness, liability or obligation of the Commonwealth or of any political subdivision, but all bonds shall be payable solely from revenues or funds pledged or available for their payment as authorized in this section, including the proceeds of any issue of bonds. Each bond shall contain on its face a statement to the effect that the financing authority is obligated to pay the principal thereof or the interest thereon only from its revenues, receipts or funds pledged or available for their payment as authorized in this act, and that*

*neither the Commonwealth nor any political subdivisions are obligated to pay the principal or interest, and that neither the faith and credit nor the taxing power of the Commonwealth nor any political subdivision is pledged to the payment of the principal of or the interest on the bonds.*

*(d) If the bonds issued by the financing authority are exempt from Federal income taxes under Federal law, the Department of Commerce shall issue an allocation charging such small issue project's pro rata share of the issue to the county in which said project is to be located.*

*(e) When gubernatorial approval is required by the provisions of Federal or State law, the Governor of the Commonwealth is hereby authorized to approve the issuance of bonds by the financing authority upon receipt of written request for approval from the financing board. Such written request shall state that the financing authority has conducted a public hearing, pursuant to appropriate public notice, concerning the purposes for which the bonds are to be issued, shall contain a description of the project or projects and shall describe the method of financing the project or projects. The written request shall also summarize the comments made and questions posed at the public hearing.*

*(f) Neither the members of the board of the financing authority nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.*

*(g) (1) Bonds issued in accordance herewith shall be authorized by resolution of the financing authority. The bonds shall be of such series, bear any date or dates, mature at such time or times, not exceeding thirty years from their respective dates, bear interest at any rate or rates or at variable rates, be of any denomination or denominations, be in any form, either coupon or registered, carry any conversion or registration privileges, have any rank or priority, be executed in any manner, be payable from such sources in any medium of payment at any place or places within or without this Commonwealth and be subject to any terms of redemption, purchase or tender by the financing authority or the holders thereof, with or without premium, as the resolution or resolutions may provide.*

*(2) The bonds shall be signed by or shall bear the facsimile signature of such officers as the financing authority shall determine, and coupon bonds shall have attached thereto in interest coupons bearing the facsimile signature of the chairman of the financing authority, all as may be prescribed in such resolution or resolutions.*

*(3) Bonds may be issued and delivered, notwithstanding that one or more of the officers signing such bonds shall have ceased to be such officer or officers at the time when such bonds shall actually be delivered.*

*(4) Bonds may be sold at public or private sales for such price or prices as the financing authority shall determine. Pending the preparation of the definitive bonds, interim receipts may be issued to the purchaser or purchasers thereof and may contain such terms and conditions as the financing authority may determine.*

*(5) Any bond reciting in substance that it has been issued by the financing authority to aid in the financing of one or more projects to accomplish the public purposes of this act shall be conclusively deemed in proceedings involving the validity or enforceability of such bond or security therefor, to have been issued for such purpose.*

*(h) Any resolution or resolutions authorizing any bonds may contain provisions which shall be part of the contract with holders thereof, as to:*

- (1) Secure the bonds.*
- (2) Make covenants against pledging all or part of its revenues or receipts to other parties.*
- (3) Make covenants limiting its right to sell, pledge or otherwise dispose of notes and bonds of governmental units, loan agreements of public or private persons or entities or other property of any kind.*
- (4) Make covenants as to additional bonds to be issued, the limitations thereon, the terms and conditions thereof, and the custody, application, investment and disposition of the proceeds thereof.*
- (5) Make covenants as to the incurring of other debts by it.*
- (6) Make covenants as to the payment of principal of or interest on bonds, the sources and methods of the payment, the rank or priority of bonds with respect to liens or security interests or the acceleration of maturity of bonds.*
- (7) Provide for replacement of lost, stolen, destroyed or mutilated bonds.*
- (8) Make covenants as to the redemption, purchase or tender of bonds by the financing authority or the holders thereof and the privileges of exchanging them for other bonds.*
- (9) Make covenants to create or authorize the creation of special funds or accounts to be held in trust or otherwise for the benefit of holders of bonds, or of reserves for other purposes and as to the use, investment and disposition of moneys held in those funds, accounts or reserves.*
- (10) Provide for the rights, liabilities, powers and duties arising upon the breach of a covenant, condition or obligation, and prescribe the events of default and the terms and conditions upon which any or all of the bonds shall become or may be declared due and payable before maturity and the terms and conditions upon which the declaration and its consequences may be waived.*
- (11) Vest in a trustee or trustees within or without this Commonwealth in trust any property, rights, powers and duties as the financing authority may determine. These may include any or all of the rights, powers and duties of any trustee appointed by the holders of bonds or notes, including rights with respect to the sale or other disposition of notes and bonds of governmental units and other instruments and security pledged pursuant to a resolution or trust indenture for the benefit of the holders of bonds and the right by suit or action to foreclose any mortgage pledged pursuant to the resolution of trust indenture for the benefit of the holders of the bonds, notes or other obligations, and to limit the right of the holders of any bonds to appoint a trustee under this act, and to limit the rights, powers and duties of the trustee.*

*(12) Pay the costs or expenses incident to the enforcement of the bonds or of the provisions of the resolution authorizing the issuance of those bonds, or the trust indenture securing the bonds or of any covenant or agreement of the financing authority with the holders of the bonds, notes or other obligations.*

*(13) Limit the rights of the holders of any bonds to enforce any pledge or covenant securing bonds.*

*(14) Make covenants other than or in addition to the covenants authorized by this act of like or different character, and make covenants to do or refrain from doing any acts and things as may be necessary, or convenient and desirable, in order to better secure bonds or which, in the absolute discretion of the financing authority, will tend to make bonds more marketable, notwithstanding that the covenants, acts or things may not be enumerated herein.*

*(i) A pledge of revenues, receipts, moneys, funds or other property or instruments made by the financing authority shall be valid and binding from the time when the pledge is made. The revenues, receipts, moneys, funds or other property pledged and thereafter received by the financing authority shall be immediately subject to the lien of the pledge without its physical delivery or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the financing authority irrespective of whether the parties have notice of the lien. Neither the resolution nor any other instrument by which a pledge under this section is created or evidence need be filed or recorded except in the records of the financing authority.*

*(j) Whether or not the bonds are of a form and character as to be negotiable instruments under the terms of Title 13 of the Pennsylvania Consolidated Statutes (relating to commercial code), the bonds are made negotiable instruments within the meaning of and for the purposes of Title 13, subject only to the provisions of the bonds for registration.*

*(k) The rights and remedies herein conferred upon or granted to the bondholders shall be in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing for the issuance of bonds or by any indenture or other agreement under which the same may be issued.*

**Section 6.4. Financing Authority Loans.—(a) No loan shall be made by the financing authority unless:**

*(1) The industrial and commercial development authority has obtained firm commitments satisfactory to the financing authority from responsible financial sources, which may include a Federal agency, beneficial owner or the project occupant, for the portion of project costs in excess of any loan requested from the financing authority;*

*(2) The industrial and commercial development authority has obtained a firm commitment satisfactory to the financing authority from the project occupant or beneficial owner to lease or use the project after construction, acquisition, rehabilitation or improvement is completed;*



(3) *The financing authority approves the terms of such lease or use and is satisfied that the project occupant or a business enterprise may reasonably be expected to comply with the terms thereof; and*

(4) *The project has received all approvals required under this act and complies with any rules and regulations of the financing authority.*

(b) *In addition to other provisions of this section limiting the power of the financing authority to make loans to industrial and commercial development authorities, in respect to a particular project, the following restrictions shall also apply:*

(1) *No funds of the financing authority shall be used in respect of any project if the financing authority would be required to operate, service or maintain the project pursuant to any lease or other agreement except upon foreclosure or except upon the occurrence of a default in the payment or terms of any loan made. Nothing shall prevent the financing authority from transferring such property to the project occupant or its designee at the end of the term of such financing.*

(2) *No provisions of this act shall prevent the inclusion in a mortgage, lease or other agreement relating to an assisted project of a provision granting the project occupant the right to purchase such project upon such terms and conditions as the financing authority may approve.*

**Section 6.5. Industrial and Commercial Development Authorities.**—*To be eligible for loans from the financing authority, an industrial and commercial development authority shall meet the following requirements in addition to any others imposed by the provisions of this act:*

(1) *The industrial and commercial development authority shall be incorporated.*

(2) *The industrial and commercial development authority shall agree to be bound by the rules and regulations of the financing authority relating to assisted projects and the operations of industrial and commercial development authorities and shall submit to examination of its books of accounts and corporate records by the financing authority at such times as the financing authority may require during the term of any loan made to it by the financing authority.*

(3) *The provisions of the act of December 20, 1985 (P.L.483, No.113), known as the "Tax-Exempt Bond Allocation Act," shall not apply to restrict the powers of the financing authority under section 6.2 of this act or the powers of any local industrial and commercial development authority or the Secretary of Commerce under this act with respect to any economic development project being financed out of the proceeds of obligations which are not exempt from Federal income taxation.*

**Section 6.6. Applications for Financing Authority Loans.**—*An industrial and commercial development authority may request a loan from the financing authority pursuant to the provisions of this act by filing an application therefor, which shall be verified by an officer of the industrial or commercial development authority duly authorized so to do, in such form and with such exhibits and supporting data as the financing authority may prescribe and by paying the fees or charges, if any, established by the financing*

*authority to defray the cost of investigating and processing applications for loans.*

**Section 6.7. Audit.**—*The accounts and books of the financing authority, including its receipts, disbursements, contracts, mortgages, investments and other matters relating to its finances, operation and affairs, shall be examined and audited every year by a recognized independent certified public accounting firm.*

**Section 6.8. Moneys of the Financing Authority.**—*Subject to the provisions of section 6.3 of this act and subject to the provisions of any agreements to the contrary entered into with lenders or trustees pursuant to the authority granted in section 6.3 of this act, all moneys of the financing authority from whatever source derived shall be paid to the treasurer of the financing authority. Said moneys shall be deposited in the first instance by the treasurer in one or more banks or bank and trust companies, in one or more special accounts or under savings contracts in savings associations in one or more special accounts, and each of such special accounts to the extent the same is not insured shall be continuously secured by a pledge of direct obligations of the United States of America or of the Commonwealth, having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account. Such securities shall either be deposited with the treasurer or be held by a trustee or agent satisfactory to the financing authority. All banks, bank and trust companies, and saving associations are authorized to give such security for such deposits. The moneys in said accounts shall be paid out on the warrant or other order of the treasurer of the financing authority, or of such other person or persons as the financing authority may authorize to execute such warrants or orders.*

Section 4. Section 13 of the act is amended to read:

**Section 13. Limitation of Powers.**—*The Commonwealth does hereby pledge to and agree with any person, firm or corporation, or Federal agency subscribing to or acquiring the bonds to be issued by the authority or the financing authority for the construction, extension, improvement or enlargement of any project or part thereof, that the Commonwealth will not limit or alter the rights hereby vested in the authority or the financing authority until all bonds at any time issued, together with the interest thereon are fully met and discharged. The Commonwealth of Pennsylvania does further pledge to and agree with the United States and any other Federal agency that, in the event that any Federal agency shall construct or contribute any funds for the construction, extension, improvement or enlargement of any project or any portion thereof, the Commonwealth will not alter or limit the rights and powers of the authority or the financing authority in any manner which would be inconsistent with the continued maintenance and operation of the project, or the improvement thereof, or which would be inconsistent with the due performance of any agreements between the authority or the financing authority and any such Federal agency, and the authority or the financing authority shall continue to have and may exercise all powers herein granted, so long as the same shall be necessary or desirable for the carrying out of the*

purposes of this act and the purposes of the United States in the construction or improvement or enlargement of the project or such portion thereof.

Section 5. Section 15 of the act, amended April 7, 1976 (P.L.81, No.34), is amended to read:

Section 15. Exemption From Taxation.—The effectuation of the authorized purpose of authorities created under *section 4 of this act and the financing authority created under section 6.1 of this act* shall and will be in all respects for the benefit of the people of the Commonwealth of Pennsylvania, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions; and, since they will as public instrumentalities of the Commonwealth be performing essential governmental functions in effectuating such purposes, authorities *and the financing authority* shall not be required to pay any taxes or assessments upon any property acquired or used by them for such purposes, and the bonds issued by any authority *or by the financing authority*, their transfer and the income therefrom, (including any profits made on the sale thereof) shall at all times be free from taxation within the Commonwealth of Pennsylvania.

Section 6. This act shall take effect immediately.

APPROVED—The 10th day of July, A. D. 1987.

ROBERT P. CASEY