

No. 1988-95

AN ACT

HB 1727

Amending the act of May 17, 1956 (1955 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," adding and amending certain definitions; permitting certain board members to designate others to exercise their powers as board members; providing for forfeiture of a board member's seat for unexcused absences from meetings; providing for certification of industrial development agencies; providing for financial statements of industrial development agencies; making editorial changes; providing for loans for industrial parks and multiple-tenancy building projects; authorizing the Authority to require additional security for loans; deleting a requirement that all loan repayments be deposited in the Industrial Development Fund; and requiring the Authority to promulgate regulations.

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

Section 1. Section 3(d) of the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act, amended May 15, 1980 (P.L.131, No.49), is amended and the section is amended by adding clauses 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:

* * *

(d) The term "critical economic area" shall mean the area encompassing any municipality or group of municipalities, county, group of counties or region of the Commonwealth reasonably defined by the Authority wherein critical conditions of unemployment, economic depression, wide-spread reliance on public assistance and unemployment compensation are found to exist by the Authority. Prior to determination and designation of any area of the Commonwealth as a critical economic area the Authority shall conduct such investigations of the area and of the records and statistical indices of the Department of Labor and Industry, as well as the declarations and statistics

of any other State or Federal agencies as shall be necessary to establish the existence of the above conditions in such area and to establish that: (i) an average of not less than (6%) of the labor force of such area has been unemployed for any five years of the preceding ten years, hereinafter designated "critical economic area A"; or (ii) an average of not less than (4%) of the labor force of such area has been unemployed for **[a period of not less than twelve months] the preceding calendar year**, hereinafter designated "critical economic area B"; or (iii) an average of not less than 4% of the labor force of such area has been unemployed for any five years of the preceding ten years, hereinafter designated "critical economic area C," immediately prior to the date of such investigations and findings utilized by the Authority. No area of the Commonwealth shall be designated a critical economic area without such investigations and findings having been first made and certified to in the permanent records of the Authority. An area of the Commonwealth having once been designated a critical economic area A or area C shall remain so for a period of six months following the month in which it ceases to qualify as a critical economic area as above defined and designated by the Authority. The Authority may designate critical economic areas annually for each fiscal year of the Commonwealth based on investigations and findings for the previous calendar year, or for periods of less than one year, at the discretion of the Authority.

* * *

(t) The term "industrial parks" shall mean land areas acquired, including existing buildings previously erected thereon, said land areas, excluding existing buildings, if any, improved and prepared by industrial development agencies in accordance with plans and specifications as approved by the Authority as sites for the establishment thereon of two or more industrial development projects by industrial development agencies in a redevelopment area or a critical economic area.

(u) The term "multiple-tenancy building project" shall mean any land, site, structure, facility or undertaking acquired or constructed for occupancy by two or more industrial enterprises, manufacturing enterprises or research and development enterprises, as those terms are defined in this act, established or to be established by an industrial development agency in a critical economic area.

Section 2. Section 4 of the act, amended June 16, 1972 (P.L.475, No.153), is amended to read:

Section 4. The Pennsylvania Industrial Development Authority.—There is hereby created a body corporate and politic, constituting a public corporation and government instrumentality by the name of "The Pennsylvania Industrial Development Authority," the board of members of which shall be composed of the following: The Secretary of Commerce *or his or her named designee*, who will serve as Chairman, the Secretary of Labor and Industry *or his or her named designee*, the Secretary of Community Affairs *or his or her named designee*, the Secretary of Agriculture *or his or her named designee* and the Secretary of Banking *or his or her named designee* and their respective successors in office and seven additional members who shall 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 of the Authority initially appointed by the Governor shall continue in office for terms of one to seven years, respectively, from the date of their appointment] and whose terms shall be for seven years** 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[; **but their successors shall each be appointed for a term of seven years**], except that any person appointed to fill a vacancy shall serve only for the unexpired term, and any appointed member of the Authority shall be eligible for re-appointment. Said members of the Authority 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.] *receive the amount of reasonable traveling, hotel and other expenses incurred in the performance of their duties in accordance with Commonwealth regulations. An appointed member of the board who fails to attend three consecutive meetings shall forfeit his or her seat unless the chairman, upon written request of the member, finds that the member should be excused from attending a meeting because of illness or the death of an immediate family member.*

Section 3. Section 5(h) and (p) of the act, amended July 10, 1963 (P.L.221, No.125), are amended to read:

Section 5. Powers of the Authority; General.—The 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 the following powers, in addition to others herein granted:

* * *

(h) To make, upon proper application of industrial development agencies, loans to such industrial development agencies of moneys held in the Industrial Development Fund *or other accounts of the Authority* for industrial development projects in critical economic areas and to provide for the repayment and redeposit of such allocations and loans in the manner herein-after provided;

* * *

(p) To take title by foreclosure to any industrial development project where such acquisition is necessary to protect any loan previously made therefor by the Authority and to pay all costs arising out of such foreclosure and acquisition from moneys held in the Industrial Development Fund *or other accounts of the Authority* and to sell, transfer and convey any such industrial development project to any responsible buyer; in the event such sale, transfer and conveyance cannot be effected with reasonable promptness, the Authority may, in order to minimize financial losses and sustain employment, lease such industrial development project to a responsible tenant or tenants; the Authority shall not lease industrial development projects except under the conditions and for the purposes cited in this section.

* * *

Section 4. The act is amended by adding a section to read:

Section 5.2. Powers of the Authority; Certification of Industrial Development Agencies.—(a) *The Authority shall have the power to review and certify all applications for industrial development agencies. The standards for certification shall be developed by regulation.*

(b) *Any agency that has been certified by the Authority shall be required to file an annual financial statement. After reviewing the financial statement, the Authority shall have the power to request an independent audit of the agency's records.*

Section 5. Section 6 of the act, reenacted and amended December 19, 1975 (P.L.591, No.166) and amended May 15, 1980 (P.L.131, No.49), is 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 devel-

opment 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.

(2.1) Where a contract to loan to an industrial development agency is to be made under provisions of this subsection (a), the following shall apply: that, in critical economic areas A, B or C where an average of (8%) or more of the labor force has been unemployed for the preceding calendar year, the Authority may contract to loan the industrial development agency an amount not in excess of (50%) of the cost of an industrial development project and an amount not in excess of (60%) of the cost of an industrial development project wherein the responsible buyer or tenant is a small business on the date of the application; and where an average of (10%) or more of the labor force has been unemployed for the preceding calendar year, the Authority may contract to loan the industrial development agency an amount not in excess of (60%) of the cost of an industrial development project and an amount not in excess of (70%) of the cost of an industrial development project wherein the responsible buyer or tenant is a small business on the date of application; further, provided that in each such instance the industrial development agency project percentage shall be removed. Where a contract to loan to an industrial development agency is to be made under the provisions of this subsection (a), the following shall apply: that, in critical economic areas A, B or C where an average of (4%) or more of the labor force has been unemployed for the preceding calendar year, the Authority may contract to loan the industrial development agency an amount not in excess of (40%) of the cost of an industrial development project wherein the responsible buyer or tenant is a small business and where an average of (6%) or more of the labor force has been unemployed for the preceding calendar year, the Authority may contract to loan the industrial development agency an amount not in excess of (50%) of the cost of an industrial development project wherein the responsible buyer or tenant is a small business and in such latter instance the industrial development agency project percentage shall be removed.

(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.

(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.

(b.1) Industrial parks:

(1) The Authority may contract to loan an amount up to (60%) of the cost of an industrial park project provided the industrial development agency contributes not less than (10%) of the cost of said projects.

(2) Loans shall only be made where the said loan of the Authority is secured by a first mortgage on such industrial park or is secured by a participation in a first mortgage thereon, subject to the exception that where a Federal agency is participating in the financing of an industrial park, the Authority may take as security for its loan a mortgage on such industrial park junior in lien only to that of the mortgage given to the Federal agency.

If the Authority's loan is secured by a participation in a first mortgage on the industrial park, the Authority may permit a portion of its loan, not exceeding in amount (10%) of the project cost, to be secured by a second mortgage on the industrial park which is junior in lien only to the participating first mortgage securing the balance of the Authority's loan and the funds borrowed from other independent and responsible sources.

(b.2) Multiple-tenancy building projects:

(1) *The cost of the project shall include only those items of cost set forth in the definition of "cost of establishing an industrial development project" in this act.*

(2) *Where this act otherwise would empower the Authority to contract to loan an amount up to (40%) of the cost of the project, the Authority may only contract to loan such an amount if the loan of the Authority is secured by a first mortgage or a participation in a first mortgage on said project; otherwise the Authority may contract to loan an amount not in excess of (30%) of the cost of the project: Provided, however, That if the Authority's loan is secured by a participation in a first mortgage on the project, the Authority may permit a portion of its loan, not exceeding in amount (10%) of the project cost, to be secured by a second mortgage on the project which is junior in lien only to the participating first mortgage securing the balance of the Authority's loan and the funds borrowed from other independent and responsible sources.*

Where making a loan in the financing of an industrial park or a multiple-tenancy building project, the requirements of this act shall apply unless otherwise provided herein, except the requirements of this act as to the proposed industrial, research and development or manufacturing enterprise to be placed thereon or therein, the proposed employment to be derived therefrom and the existence of a responsible buyer or responsible tenant therefor shall not apply.

(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] evidenced by bond or note of the industrial development agency and secured 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. Loans for industrial parks and multiple-tenancy building projects shall be secured as provided in subsections (b.1) and (b.2), respectively. The Authority may require such additional security for its loan as the board may determine necessary.*

(f) *Where a contract to loan to an industrial development agency is to be made under the provisions of subsection (a), the following shall apply that, in critical economic areas A, B or C where an average of 8% or more of the labor force has been unemployed for the preceding calendar year, the Authority may contract to loan the industrial development agency an amount not in excess of 50% of the cost of an industrial development project and an amount not in excess of 60% of the cost of an industrial development*

project wherein the responsible buyer or tenant is a small business on the date of the application; and where an average of 10% or more of the labor force has been unemployed for the preceding calendar year, the Authority may contract to loan the industrial development agency an amount not in excess of 60% of the cost of an industrial development project and an amount not in excess of 70% of the cost of an industrial development project wherein the responsible buyer or tenant is a small business on the date of application; further, provided that in each such instance the industrial development agency project percentage shall be removed. Where a contract to loan to an industrial development agency is to be made under the provisions of subsection (a), the following shall apply: that, in critical economic areas A, B or C where an average of 4% or more of the labor force has been unemployed for the preceding calendar year, the Authority may contract to loan the industrial development agency an amount not in excess of 40% of the cost of an industrial development project wherein the responsible buyer or tenant is a small business and where an average of 6% or more of the labor force has been unemployed for the preceding calendar year, the Authority may contract to loan the industrial development agency an amount not in excess of 50% of the cost of an industrial development project wherein the responsible buyer or tenant is a small business and in such latter instance the industrial development agency project percentage shall be removed.]

Moneys so loaned by the Authority to industrial development agencies shall be withdrawn from the Industrial Development Fund *or other account of the Authority* 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.

Section 6. The act is amended by adding sections to read:

Section 7.1. Employment Projection Audits.—*The Authority shall implement a procedure to determine whether the employment projections set out in the loan application under section 7 are achieved.*

Section 13.1. Annual Report.—*Prior to July 1 of each year, the Authority shall provide a report on its operation for the previous calendar year to the House Business and Commerce Committee and the Senate Community and Economic Development Committee. Such report may be a separate report or part of any other report prepared by the Authority or the Department of Commerce provided that any such report include the steps taken by the Authority to comply with the recommendations set forth in the final report of the House Business and Commerce Committee on the Sunset Evaluation and Review of the Pennsylvania Industrial Development Authority (September 28, 1987).*

Section 13.2. Regulations.—*By December 31, 1988, the Authority shall promulgate regulations necessary to effectuate the purposes of the act, including, if necessary and where appropriate, flexible provisions concerning changes in items subject to frequent variance, including, but not limited to, interest rates or other economic development factors.*

Section 7. The presently confirmed board members of the Pennsylvania Industrial Development Authority, as of the effective date of this act, shall continue to serve as board members until their present terms of office expire and until their successors are appointed and qualified.

Section 8. The act of July 6, 1961 (P.L.509, No.262), known as the Pennsylvania Redevelopment Area Economic Cooperation and Implementation Act, is repealed.

Section 9. This act, with respect to The Pennsylvania Industrial Development Authority, shall constitute the legislation required to reestablish the authority under the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Section 10. This act shall take effect July 1, 1988.

APPROVED—The 13th day of July, A. D. 1988.

ROBERT P. CASEY