

No. 2004-22

AN ACT

SB 1026

Amending Title 64 (Public Authorities and Quasi-Public Corporations) of the Pennsylvania Consolidated Statutes, providing for economic development financing; further providing for money appropriated to the Department of Community and Economic Development for the Base Retention and Conversion Pennsylvania Action Committee; making a related repeal; and making an editorial change.

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

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

PART II  
ECONOMIC DEVELOPMENT FINANCING

Chapter

- 11. Pennsylvania Industrial Development Authority (Reserved)
- 13. Pennsylvania Economic Development Financing Authority (Reserved)
- 15. Commonwealth Financing Authority

CHAPTER 11  
PENNSYLVANIA INDUSTRIAL DEVELOPMENT<sup>1</sup> AUTHORITY  
(Reserved)

CHAPTER 13  
PENNSYLVANIA ECONOMIC DEVELOPMENT FINANCING  
AUTHORITY  
(Reserved)

CHAPTER 15  
COMMONWEALTH FINANCING AUTHORITY

Subchapter

- A. General Provisions
- B. Structure and Powers
- C. Bonds
- D. Accounts, Indebtedness and Use
- E. Programs

SUBCHAPTER A  
GENERAL PROVISIONS

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<sup>1</sup>"INVESTMENT" in enrolled bill.

## Sec.

1501. Scope.

1502. Construction.

1503. Findings and declaration of policy.

1504. Definitions.

## § 1501. Scope.

This chapter relates to the Commonwealth Financing Authority.

## § 1502. Construction.

(a) General rule.—This chapter shall be liberally construed in order to effect the legislative and public purposes as set forth in this subchapter.

(b) Rights of obligees.—The provisions of this chapter providing for security, rights and remedies of obligees of the authority shall be liberally construed to achieve the legislative and public purposes as set forth in this subchapter.

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

## § 1503. Findings and declaration of policy.

The General Assembly finds and declares as follows:

(1) Activities which lead to the creation and retention of jobs within this Commonwealth, the establishment of economically viable Pennsylvania communities, the development of a stable tax base within Pennsylvania communities, the reuse of abandoned industrial, commercial and other previously utilized sites, the promotion and commercialization of Pennsylvania products and services and the investment of private capital in Pennsylvania enterprises and Pennsylvania communities will improve the health, safety and general welfare of the people of this Commonwealth by increasing employment of Pennsylvania workers, by developing a stable State economy, by revitalizing communities, by reducing, eliminating and preventing blight and eliminating certain environmental hazards.

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

(3) A minimum level of unemployment and a maximum level of business opportunity can best be provided by the promotion, attraction, stimulation, rehabilitation and revitalization of industrial, commercial,

technological, tourist, agricultural and other economic activities in this Commonwealth. The promotion of these activities will also enhance Pennsylvania's competitiveness in the global economy.

(4) The provisions of the Constitution of Pennsylvania guaranteeing the residents of this Commonwealth clean air and water and the preservation of the environment and the implementation of those provisions through the establishment of quality standards relating to abatement or elimination of pollution have resulted in the need for additional means of financing to assist and encourage compliance with standards on air, water, solid and liquid waste disposal, sewage disposal and pollution control.

(5) Industrial and commercial facilities should be promoted, whether by the financing of these facilities or by the encouragement of other activities deemed appropriate which will eliminate blight or otherwise improve an area for industrial, commercial or other economic activity.

(6) To protect the health, safety and general welfare of the people of this Commonwealth and to further encourage economic development and efficiency within this Commonwealth by providing basic services and facilities, it is necessary to provide additional or alternative means of financing infrastructure facilities, transportation systems, industrial parks, energy conversion facilities, facilities for the furnishing of energy, water and telecommunications, facilities for the collection or treatment of wastewater and storm water, tourism, parking facilities, health care facilities and other basic service and related facilities which are conducive to economic activity within this Commonwealth and which are consistent with the purposes of this chapter.

(7) To protect the health, safety and general welfare of the people of this Commonwealth, it is desirable to build, improve and finance facilities owned by municipalities, municipal authorities and other authorities and instrumentalities of the Commonwealth, including publicly owned roads and other transportation systems and waste treatment and disposal facilities.

(8) Industrial, commercial, technological, tourist, agricultural and other economic activity should be promoted through the development of new businesses and the expansion of existing businesses, the revitalization of real estate assets, the acquisition and preparation of sites for future use and the support of tax increment financing.

(9) It is the policy of this Commonwealth to promote the health, safety, employment, business opportunities, economic activity and general welfare of the people by:

(i) establishing an authority to exist and operate as a public instrumentality of the Commonwealth; and

(ii) establishing the programs under this chapter and authorizing financial assistance, regardless of whether the applicant or the project

user is public or private or whether the project is undertaken with a profit or not-for-profit purpose.

§ 1504. Definitions.

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

“Agriculture.” Any of the following:

- (1) Production agriculture.
- (2) Agribusiness.
- (3) The sale of farm commodities at wholesale.
- (4) The sale of farm commodities at retail by urban and rural supermarkets located or to be located in underserved areas.
- (5) Farmers’ markets.
- (6) Energy-related activities impacting production agriculture or agribusiness.
- (7) Activities which implement best practices related to agricultural waste, agricultural waste products, agricultural by-products or fertilizer.
- (8) Any other activity deemed by the Commonwealth Financing Authority to involve agriculture.

“Applicant.” A person that submits an application in accordance with Subchapter E (relating to programs).

“Authority.” The Commonwealth Financing Authority established in section 1511 (relating to authority).

“Board.” The board of the Commonwealth Financing Authority established in section 1512 (relating to board).

“Bonds.” Bonds, notes, instruments, refunding notes and bonds and other evidences of indebtedness or obligations which the authority is authorized to issue pursuant to this chapter.

“Commercial lending activities.” The making of loans and the provision of deposit services to business entities.

“Commercial lending institutions.” A federally chartered or state-chartered bank, savings bank or savings and loan association which has a satisfactory rating from its primary regulator and which is engaged in commercial lending activities. The institution must operate at least one full-service branch for deposit gathering and lending located within this Commonwealth.

“Commonwealth agency.” An agency, authority or other instrumentality of the Commonwealth.

“Comprehensive county plan” or “comprehensive municipal plan.” The comprehensive plan adopted pursuant to applicable law by:

- (1) A county or a municipality.
- (2) A city of the first class.
- (3) A city of the second class.

“Cost of the project” or “cost.” Any of the following:

(1) Costs and expenses of acquisition of interests in land, infrastructure, buildings, structures, equipment, furnishings, fixtures and other tangible or intangible property, which comprise the project.

(2) Costs and expenses of construction, reconstruction, erection, equipping, expansion, extension, improvement, installation, rehabilitation, renovation or repair of the buildings, structures and equipment, which comprise the project.

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

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

(5) Costs and expenses of engineering services, financial services, accounting services and legal services, plans, specifications, studies and surveys necessary or incidental to determining the feasibility or practicability of the project.

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

(7) Other costs and expenses deemed necessary by the Commonwealth Financing Authority.

“Department.” The Department of Community and Economic Development of the Commonwealth.

“Executive agency.” The Governor and the departments, boards, commissions, authorities and other officers and agencies of the Commonwealth. The term does not include any court or other officer or agency of the Unified Judicial System, the General Assembly and its officers and agencies, an independent agency or a State-affiliated entity.

“Farm commodities.” Agricultural, horticultural, aquacultural, vegetable, fruit and floricultural products of the soil; livestock and meats; wools; hides; furs; poultry, eggs, dairy products, nuts, mushrooms, honey products and forest products.

“Farmer.” A person engaged in the business of production agriculture.

“Federal agency.” The United States of America, the President of the United States of America, the Congress and any department, corporation, agency or instrumentality designated or established by the United States of America.

“Finance.” The term shall have the broadest possible meaning. The term includes refinance.

“Financial assistance.” Loans, grants, guarantees, sales, leases, investments authorized in Subchapter E (relating to programs), lines of credit, letters of credit and other financial arrangements which the Commonwealth Financing Authority is authorized to undertake under Subchapter E (relating to programs).

“Financing.” The term shall have the broadest possible meaning. The term includes refinancing.

“Fund manager.” An organization which has as its primary purpose the managing of capital for real estate investments.

“Government agency.” A Commonwealth agency; the Unified Judicial System and its courts, officers and agencies; the General Assembly and its officers and agencies; a political subdivision; a municipal authority or other local authority; a local, regional or metropolitan transportation authority; or a board, commission or other agency or instrumentality of a political subdivision, a municipal authority or other local authority.

“Governing body.” The body or board authorized by law to enact ordinances or adopt resolutions for a political subdivision.

“Independent agency.” A board, commission or other agency or officer of the Commonwealth which is not subject to the policy, supervision and control of the Governor. The term does not include a State-affiliated entity, any court or other officer or agency of the Unified Judicial System, the General Assembly and its officers and agencies, a State-related institution, a political subdivision or a local, regional or metropolitan transportation authority.

“Industrial development corporation.” An entity which has been certified as an industrial development agency by the Pennsylvania Industrial Development Authority Board under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

“Issuing authority.” As defined in section 3 of the act of July 11, 1990 (P.L.465, No.113), known as the Tax Increment Financing Act.

“Managing partner.” A general partner, a manager, a managing member or another person designated as the manager of a venture capital partnership.

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

“Obligee of the authority.” Any of the following:

(1) A holder or owner of bonds of the Commonwealth Financing Authority.

(2) A trustee or other fiduciary for any holder or owner of bonds of the Commonwealth Financing Authority.

(3) A provider of a letter of credit, policy of municipal bond insurance or other credit enhancement or liquidity facility for bonds of the Commonwealth Financing Authority.

(4) A lessor or installment seller demising property to the Commonwealth Financing Authority in connection with a project.

(5) A provider of an interest rate management agreement or other agreement or arrangement authorized under section 1513(a)(28) (relating to powers).

“Pennsylvania-related company.” An entity with operations located in this Commonwealth or an entity willing to locate significant business operations in this Commonwealth.

**"Philadelphia Metropolitan Statistical Area."** The Philadelphia, Pennsylvania, Metropolitan Division of the Philadelphia-Camden-Wilmington, Pennsylvania-New Jersey, Delaware-Maryland Metropolitan Statistical Area as announced on June 6, 2003, by the United States Office of Management and Budget pursuant to Standards for Defining Metropolitan and Micropolitan Statistical Areas by the Office of Management and Budget for the 2000 Decennial Census of the United States Bureau of the Census as published in the Federal Register, Vol. 65, No. 249, on December 27, 2000, comprising the Pennsylvania counties of Philadelphia, Delaware, Bucks, Montgomery and Chester.

**"Private developer."** A person that is all of the following:

- (1) Engaged in the development of real estate.
- (2) Determined by the Commonwealth Financing Authority to be financially responsible to assume all obligations proposed to be undertaken.

**"Production agriculture."** The management and use of farming resources for any of the following:

- (1) The production of:
  - (i) agricultural, horticultural, aquacultural, vegetable, fruit or floricultural products of the soil;
  - (ii) livestock or livestock products;
  - (iii) milk or dairy products; or
  - (iv) poultry or poultry products.
- (2) Any other practices approved by the Department of Agriculture.

**"Project."** An activity which promotes economic development or opportunities within this Commonwealth. The term shall not include activities conducted by a for-profit entity directly or indirectly related to gaming.

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

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

**"Secretary."** The Secretary of Community and Economic Development of the Commonwealth.

**"Supermarket."** A retail store operated on a self-service basis, primarily selling groceries, fresh produce, meat, bakery and dairy products. The term does not include a convenience store.

**"Taxable bonds."** Bonds or other evidence of indebtedness, the interest on which is includable in gross income for Federal income taxation purposes.

**"Tax-exempt bonds."** Bonds or other evidence of indebtedness, the interest on which is excludable from gross income for Federal income taxation purposes.

**"Tax increment district."** As defined in the act of July 11, 1990 (P.L.465, No.113), known as the Tax Increment Financing Act.

“Tourism.” An activity which promotes or encourages individuals to travel to a location within this Commonwealth for pleasure.

“Venture capital partnership.” An entity whose purpose is to make investments in companies and is formed as a limited partnership, limited liability company or comparable investment entity.

## SUBCHAPTER B STRUCTURE AND POWERS

Sec.

1511. Authority.

1512. Board.

1513. Powers.

1514. Limitation.

§ 1511. Authority.

(a) Establishment.—There is established an independent authority to be known as the Commonwealth Financing Authority. The authority shall be an instrumentality of the Commonwealth and a body corporate and politic, with corporate succession.

(b) Governance.—The authority shall be governed by the board. The powers of the authority shall be exercised by the board.

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

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

(e) Audit.—

(1) The accounts and books of the authority shall be examined and audited annually by an independent certified public accounting firm.

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

(f) Reports.—(Reserved).

(g) Publication.—The authority shall annually publish a concise financial statement in the Pennsylvania Bulletin.

(h) Cooperation.—Executive agencies shall cooperate with and provide assistance to the authority without financial reimbursement.

(i) Existence and dissolution.—

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

(2) The authority may be dissolved by law if all outstanding liabilities of the authority, including bonds and other contractual obligations, have been fully paid, retired, satisfied or discharged or provision has been made for payment of all outstanding liabilities of the authority, including bonds and other contractual obligations. Upon the dissolution of the



authority, all funds, assets and other property of the authority shall vest in the Commonwealth.

(j) Procurement.—The authority shall be considered as an independent agency for the purposes of 62 Pa.C.S. Pt. I (relating to Commonwealth procurement code).

(k) Limitation on action.—If any provision of this section or section 1512 (relating to board) is held invalid by a court of competent jurisdiction, the authority shall not borrow further moneys nor issue further bonds, and the authority shall not further disburse to any person proceeds of any issue of bonds previously authorized. All provisions of outstanding bonds of the authority and all rights and remedies of obligees of the authority under this chapter shall be and shall remain valid and enforceable.

(l) Relationship with department.—

(1) The department shall provide administrative services and staff, including staff legal counsel, to the authority and the board. The authority shall reimburse the department for the cost of providing the administrative services and staff.

(2) The authority may enter into agreements with the department setting forth the rights and obligations they have to each other in carrying out their respective responsibilities under and to further the intent of this chapter.

(m) Applicability.—The following acts shall apply to the authority and the board:

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

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

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

§ 1512. Board.

(a) Composition.—The board shall be composed of the following members:

(1) The Secretary of Community and Economic Development or a designee.

(2) The Secretary of the Budget or a designee.

(3) The Secretary of Banking or a designee.

(4) Four legislative appointees.

(i) Appointments are as follows:

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

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

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

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

(ii) Legislative appointees shall serve at the pleasure of the appointing authority.

(iii) An individual appointed to the board pursuant to subparagraph (i) may not be a member of the General Assembly or staff of a member of the General Assembly.

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

(c) Meetings.—The board shall meet at the call of the chairperson.

(d) Quorum.—Five members of the board shall constitute a quorum, and the following shall apply:

(1) The consent of at least five members of the board, with at least four of the consenting members being appointed under subsection (a)(4), shall be necessary to take action on behalf of the authority for any of the following:

(i) Adopting bylaws.

(ii) Hiring professionals under section 1513(a)(5) and (6) (relating to powers).

(iii) Authorizing bonds.

(iv) Approving projects and contracts under Subchapter E (relating to programs).

(v) Adopting guidelines relating to the implementation of Subchapter E.

(2) A majority of the board shall be necessary to take any other action on behalf of the authority.

(e) Compensation.—The members of the board shall be entitled to no compensation for their services as members of the board but shall be entitled to reimbursement for all necessary and reasonable expenses incurred in connection with the performance of their duties as members of the board.

(f) Fiduciary relationship.—The members of the board and the professional personnel of the board shall stand in a fiduciary relationship with the Commonwealth and the authority as to the moneys in the accounts of the authority and investments of the authority.

(g) Standard of care.—The members of the board in performance of their duties under this chapter shall exercise the standard of care required by 20 Pa.C.S. Ch. 73 (relating to municipalities investments).

(h) Liability.—Members of the board shall not be liable personally on any obligations of the authority, including bonds of the authority.

(i) Initial appointment and vacancy.—Appointing authorities shall appoint initial members to the board within 30 days of the effective date of this chapter. Whenever a vacancy occurs on the board, the appointing authority shall appoint a successor member within 30 days of the vacancy.

§ 1513. Powers.

(a) Powers.—The authority may do all of the following:

(1) Adopt bylaws and guidelines proposed by the department as necessary.

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

(3) Adopt, use and alter a corporate seal.

(4) Establish accounts necessary or desirable for its corporate purposes.

(5) Employ an executive director.

(6) Retain attorneys, accountants, auditors and financial experts to render services and engage the services of other advisors, consultants and agents as necessary. For the purposes of this paragraph, the authority shall be considered an independent agency for purposes of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

(7) Pay or satisfy obligations of the authority.

(8) Contract and execute instruments, including financing agreements, letter of credit agreements, liquidity agreements, guarantees, sureties, mortgages, loans, standby loan commitments and contracts of insurance, which are necessary or appropriate for carrying on the business of the authority. This power includes the ability to make and execute contracts for the servicing of loans and mortgages acquired by the authority.

(9) Borrow money, issue bonds, obtain lines and letters of credit and incur debt.

(10) Pledge the credit of the authority and provide security and liquidity to obligees of the authority as the authority deems necessary or appropriate.

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

(12) Negotiate modifications or alterations to financing agreements, mortgages or security interests.

(13) Foreclose on a mortgage or security interest in default.

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

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

(16) Impose and collect fees and charges in connection with loan commitments and servicing, including reimbursement of costs of financing.

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

(18) Sell, transfer, convey and dispose of any property, whether tangible or intangible.

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

(20) Provide financial assistance to applicants and project users.

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

(22) Make rules regarding the operation of properties and facilities of the authority subject to agreements with obligees of the authority.

(23) Develop, adopt and implement binding policies or guidelines assuring all of the following:

(i) All persons are accorded equal opportunity in employment and contracting associated with the programs established under Subchapter E (relating to programs). This paragraph includes the authority's contractors, subcontractors, assignees, lessees, agents, vendors and suppliers.

(ii) Contracting parties demonstrate diversity in ownership of equity interests.

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

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

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

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

(28) Negotiate and enter into interest rate exchange agreements, interest rate cap agreements, collar agreements, corridor agreements, ceiling agreements, floor agreements, forward agreements, float agreements and other similar arrangements which, in the judgment of the authority, will assist the authority in managing the interest costs of the authority.

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

(i) Financial assistance.

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

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

(iv) Conveyance with or without consideration of any part or all of a project being financed to the project user or applicant on or before payment of all bonds and contractual obligations of the authority incurred with respect to the project.

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

(30) Do any appropriate act necessary or convenient to:

(i) carry out and effectuate the purposes of this chapter; or

(ii) exercise the powers set forth in this subsection, including any act reasonably implied from those powers.

(b) Duties.—The authority shall do all of the following:

(1) Administer the programs established in Subchapter E in accordance with this chapter.

(2) Fund the programs established in Subchapter E and 12 Pa.C.S. Ch. 29 (relating to machinery and equipment loans) subject to Subchapter D (relating to funds, accounts, indebtedness and use).

§ 1514. Limitation.

Except upon foreclosure or default under a loan made under this chapter, the board may not approve an application or finance a project if the board or authority would be required to operate, service or maintain the project under a lease or other agreement.

SUBCHAPTER C  
BONDS

Sec.

1521. Bonds issuance.

1522. Commonwealth taxation.

1523. Federal taxation.

1524. Validity of bonds; limitation on actions.

1525. Provisions of bonds; trust agreements.

1526. Validity of pledge.

1527. Commonwealth pledges.

1528. Bonds to be legal investments.

1529. Rights and remedies of obligees.

§ 1521. Bonds issuance.

(a) Authorization.—The authority may issue limited obligation revenue bonds and other types of limited obligation revenue financing. Bonds issued and financing incurred pursuant to this subchapter shall be subject to the limits set forth in section 1543 (relating to indebtedness) and shall be in the name of the authority.

(b) **Taxability.**—The authority may issue both tax-exempt bonds and taxable bonds to fund the programs established in Subchapter E (relating to programs).

(c) **Authorization requirements.**—

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

(2) The resolution of the board authorizing an issuance of bonds or the documents approved by the resolution shall provide that the bonds:

(i) be of a series;

(ii) bear a date or dates;

(iii) bear or accrue interest at any rate or rates, whether fixed or variable;

(iv) be in denominations;

(v) be in any form, either coupon or fully registered without coupons or in certificated or book-entry-only form;

(vi) carry registration, exchangeability and interchangeability privileges;

(vii) be payable in any medium of payment and at any place or places;

(viii) mature on a date or dates not to exceed 30 years from the bonds' original issue date; and

(ix) be subject to terms of redemption, if any.

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

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

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

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

(d) **No debt or liability of the Commonwealth.**—

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

(2) Bonds shall be payable solely from revenues of the authority or accounts pledged or available for their repayment as authorized in this chapter which may include any of the following:

(i) The proceeds of bonds.

(ii) Funds appropriated to the authority for repayment as authorized in this chapter.

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

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

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

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

(e) Sale.—

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

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

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

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

(h) Use.—The authority may, as it deems necessary and desirable, use the proceeds of bonds for any of the following:

(1) Making loans, grants or guarantees.

(2) Purchasing loans, mortgages, security interests or loan participations.

(3) Paying incidental expenses in connection with activity under paragraphs (1) and (2), including administrative costs of the authority and the department.

(4) Paying expenses of authorizing and issuing the bonds.

(5) Paying principal, redemption or purchase price and interest on bonds.

(6) Funding reserves.

(i) Refunding.—Subject to provisions of this chapter and the terms of bonds or other contractual obligations issued in accordance with this chapter, the authority may refund any outstanding debt of the authority whether the debt represents principal or interest, in whole or in part, at any time. For the purposes of this subsection, the term “refund” and its variations means the issuance and sale of obligations the proceeds of which are used or are to be used for the payment or redemption of outstanding obligations upon or prior to maturity.

§ 1522. Commonwealth taxation.

(a) General.—The effectuation of the purposes of the authority is for the benefit of the people of this Commonwealth, for the increase of commerce and prosperity and for the improvement of health, safety, welfare and living conditions.

(b) Authority.—Since the authority, as a public instrumentality of the Commonwealth, will be performing essential governmental functions in effectuating these purposes, the authority is not required to pay any taxes or

assessments upon any property acquired or used or permitted to be used by the authority for its purposes.

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

§ 1523. Federal taxation.

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

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

- (1) The authority has conducted a public hearing, with appropriate public notice, concerning the purposes for which the bonds are to be issued.
- (2) A description of the project or projects to be financed.
- (3) A description of the method of financing the project or projects.
- (4) A summary of the comments made and questions posed at the public hearing.

§ 1524. Validity of bonds; limitation on actions.

(a) Presumption.—Bonds reciting in substance that they have been issued by the authority to accomplish the public purposes of this chapter shall be conclusively deemed in any suit, action or proceeding involving the validity or enforceability of the bonds or their security to have been issued for the public purposes of this chapter.

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

§ 1525. Provisions of bonds; trust agreements.

A resolution authorizing the issuance of bonds or any trust agreement approved in or by a resolution authorizing the issuance of bonds may contain provisions which do any of the following:

- (1) Secure the bonds.
- (2) Covenant against any of the following:
  - (i) Pledging or granting a security interest in all or any part of the authority's revenues or all or any part of its property to which its right or title exists or which may later come into existence.



- (ii) Permitting or suffering any lien on all or any part of its revenues or property.
- (iii) Extending the time for the payment of bonds or interest.
- (3) Covenant with respect to limiting the authority's right to sell, pledge or otherwise dispose of bonds or notes of governmental units, loan agreements or other property.
- (4) Covenant as to any of the following:
  - (i) Additional bonds to be issued.
  - (ii) Limitations on additional bonds.
  - (iii) Terms and conditions of additional bonds.
  - (iv) Custody, application, investment and disposition of proceeds of bonds.
  - (v) Incurring of other debts or obligations by the authority.
  - (vi) Payment of principal of or interest on bonds.
  - (vii) Sources and methods of payment.
  - (viii) Rank or priority of bonds with respect to liens or security interests.
  - (ix) Redemption, purchase and tender of bonds by the authority or the bondholders and the privilege of exchange of the bonds for other bonds.
  - (x) Use, investment and disposition of the money held in special funds, accounts or reserves.
  - (xi) Use of any or all of the authority's real or personal property.
  - (xii) Warrant of title to the authority's real or personal property.
- (5) Provide for any of the following:
  - (i) Replacement of lost, stolen, destroyed or mutilated bonds.
  - (ii) Maintenance of the authority's real and personal property.
  - (iii) Replacement of the authority's real and personal property.
  - (iv) Insurance to be carried on the authority's real and personal property and the use and disposition of the insurance proceeds.
  - (v) Rights, liabilities, powers and duties arising upon the breach of any covenant, condition or obligation.
- (6) Create or authorize the creation of special funds or accounts to be held in trust or otherwise for the benefit of bondholders or of reserves for debt service or other purposes.
- (7) Provide for obtaining letters of credit, bond insurance and other facilities for credit enhancement and liquidity.
- (8) Prescribe any of the following:
  - (i) Procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated.
  - (ii) Percentage of the principal amount of bonds the holders of which must consent to the amendment or abrogation of any contract.
  - (iii) Manner in which the consent under subparagraph (ii) may be given.
- (9) Prescribe any of the following:

- (i) Events of default.
  - (ii) Terms and conditions upon which any or all of the bonds become or may be declared due and payable before stated maturity following an event of default.
  - (iii) Terms and conditions upon which the declaration of default and its consequence may be waived.
- (10) Pay the costs or expenses incident to any of the following:
- (i) The enforcement of the bonds.
  - (ii) The provisions of the resolution authorizing the issuance of the bonds.
  - (iii) The trust agreement securing the bonds.
  - (iv) Any covenant or agreement of the authority with the holders of the bonds or other obligees of the authority.
- (11) Vest in a trustee, within or without this Commonwealth, any property, rights, powers and duties in trust, including rights with respect to the sale or other disposition of notes and bonds of governmental units and other instruments and security pledged under a resolution or trust agreement for the benefit of bondholders and rights, by suit or action, to foreclose a mortgage pledged under a resolution or trust indenture for the benefit of bondholders.
- (12) Limit the rights, powers and duties of a trustee and the right of bondholders to appoint a trustee.
- (13) Establish the terms and conditions upon which a trustee or the bondholders may enforce a covenant or rights securing or relating to the bonds.
- (14) Exercise all or any part or combination of the powers granted in this chapter.
- (15) Make covenants other than and in addition to the covenants expressly authorized by this chapter.
- (16) Do or refrain from doing any other act and thing necessary, convenient or desirable in order to better secure the bonds of the authority or, in the absolute discretion of the authority, as will tend to make bonds of the authority more marketable. This paragraph applies notwithstanding that the covenant, act or thing may not be specifically enumerated in this chapter as long as the covenant, act or thing is in accordance with the intent of this chapter.

§ 1526. Validity of pledge.

A pledge of or grant of a security interest in revenues or instruments made by the authority shall be valid and binding from the time when the pledge is made. The revenues, receipts, money, funds or other property or instruments pledged and later received by the authority shall immediately be subject to the lien of the pledge or security interest without any physical delivery of the property pledged or further act. The lien of the pledge or security interest shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether the

parties have notice of the lien, pledge or security interest. No instrument by which a pledge or security interest is created, evidenced or noticed need be recorded or filed to perfect the pledge or security interest except in the records of the authority.

§ 1527. Commonwealth pledges.

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

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

§ 1528. Bonds to be legal investments.

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

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

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

§ 1529. Rights and remedies of obligees.

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

#### SUBCHAPTER D ACCOUNTS, INDEBTEDNESS AND USE

Sec.

1541. Trust accounts.

1542. Revolving loan program accounts.

1543. Indebtedness.

1544. Use.

§ 1541. Trust accounts.

The authority shall establish one or more trust accounts into which it shall deposit the proceeds of bonds authorized to be issued pursuant to section 1521 (relating to bonds issuance) to fund the programs established in Subchapter E (relating to programs) and any other moneys legally available for the purpose. Moneys held in an account established under this section may be pledged by the authority to secure payment of the bonds.

§ 1542. Revolving loan program accounts.

(a) The Business in Our Sites Program account.—The authority shall establish an account for the program established in section 1551 (relating to Business in Our Sites Program). Proceeds of bonds issued to fund the Business in Our Sites Program and any moneys received as loan repayments under the Business in Our Sites Program, or moneys otherwise made available to the program, shall be deposited in the account and made available for additional planning grants, project grants or loans for the purposes of the program in section 1551, subject to the provisions of any pledge to or agreement made by the authority with obligees of the authority.

(b) The First Industries Program account.—The authority shall establish an account for the program established in section 1552 (relating to First Industries Program). Proceeds of bonds issued to fund the First Industries Program, any moneys received as loan repayments or in repayment or recovery of loan guarantees under the program, or moneys otherwise made available to the program, shall be deposited in the account and made available for additional planning grants or loans or used for additional loan guarantees as provided in section 1552, subject to the provisions of any pledge to or agreement made by the authority with obligees of the authority.

§ 1543. Indebtedness.

(a) General rule.—Subject to the limitations of subsection (b), the authority may, in its own name, incur indebtedness, including through the issuance of bonds, in an amount necessary to fund the program as established in Subchapter E (relating to programs) and in 12 Pa.C.S. Ch. 29 (relating to machinery and equipment loans).

(b) Program limitations.—Indebtedness incurred by the authority under subsection (a) shall not, in aggregate, exceed any of the following:

(1) \$300,000,000 for the program established in section 1551 (relating to Business in Our Sites Program).

(2) \$150,000,000 for the program established in section 1552 (relating to First Industries Program).

(3) \$60,000,000 for the program established in section 1557 (relating to New Pennsylvania Venture Capital Investment Program).

(4) \$150,000,000 for the program established in section 1555 (relating to Building Pennsylvania Program).

(5) \$75,000,000 for the program established in 12 Pa.C.S. Ch. 29.

(6) \$250,000,000 for the program established in section 1554 (relating to New Pennsylvania Venture Guarantee Program).

(7) \$100,000,000 for the program established in section 1556 (relating to Tax Increment Financing Guarantee Program).

(8) \$50,000,000 for the program established in section 1553 (relating to Second Stage Loan Program).

(c) Fiscal year limitations.—

(1) Except as provided in subsection (d) and paragraphs (2), (3) and (4), the aggregate amount of indebtedness incurred by the authority, including through the issuance of bonds, may not exceed \$250,000,000 reduced by the aggregate amount of Commonwealth indebtedness incurred as a result of the act of February 12, 2004 (P.L.72, No.10), known as the Water and Wastewater Treatment Project Bond Act.

(2) Except as provided in subsection (d) and paragraphs (3) and (4) and upon adoption of a resolution under subsection (f)(1), the aggregate amount of indebtedness incurred by the authority, including through the issuance of bonds, may not exceed \$500,000,000 reduced by the aggregate amount of Commonwealth indebtedness incurred as a result of the Water and Wastewater Treatment Project Bond Act.

(3) Except as provided in subsection (d) and paragraph (4) and upon adoption of a resolution under subsection (f)(2), the aggregate amount of indebtedness incurred by the authority, including through the issuance of bonds, may not exceed \$750,000,000 reduced by the aggregate amount of Commonwealth indebtedness incurred as a result of the Water and Wastewater Treatment Project Bond Act.

(4) Except as provided in subsection (d) and upon adoption of a resolution under subsection (f)(3), the aggregate amount of indebtedness incurred by the authority, including through the issuance of bonds, may not exceed \$1,000,000,000 reduced by the aggregate amount of Commonwealth indebtedness incurred as a result of the Water and Wastewater Treatment Project Bond Act.

(d) Exception.—Subsection (c) shall not apply to the aggregate amount of indebtedness incurred by the authority, including through the issuance of bonds, for the following programs:

(1) The program established in section 1553.

(2) The program established in section 1554.

(3) The program established in section 1556.

(e) Certifications.—

(1) Beginning with fiscal year 2005-2006 and each fiscal year thereafter, after the final estimate required by section 618 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is signed for the fiscal year, the Secretary of the Budget shall certify to the board all of the following:

(i) Whether sufficient surplus revenues will exist in the General Fund for the two succeeding fiscal years immediately following the fiscal year for which the estimate was signed to pay any liabilities which would be incurred by the Commonwealth during those years if the authority incurs an additional \$250,000,000 of indebtedness.

(ii) The aggregate amount of liabilities which would be incurred by the Commonwealth for the two succeeding fiscal years immediately following the fiscal year for which the estimate was signed which are a result of the activities by the authority.

(2) The Secretary of the Budget shall publish the certification in the Pennsylvania Bulletin as soon as possible.

(f) Increases.—

(1) After publication of the certification required by subsection (e) for the fiscal year 2005-2006, unless the Secretary of the Budget certifies under subsection (e) that the sufficient surplus revenues will not exist, the board may adopt a resolution authorizing the incurring of additional indebtedness subject to the limitation of subsection (c)(2). If the Secretary of the Budget certifies under subsection (e) that the sufficient surplus revenues will not exist, indebtedness of the authority shall remain subject to subsection (c)(1), and, upon publication of a certification under subsection (e) that sufficient surplus revenues will exist, the board may adopt a resolution authorizing the incurring of additional indebtedness subject to subsection (c)(2).

(2) For the fiscal year following the adoption of a resolution under paragraph (1), unless the Secretary of the Budget certifies under subsection (e) that the sufficient surplus revenues will not exist, the board may adopt a resolution authorizing the incurring of additional indebtedness subject to the limitation of subsection (c)(3). If the Secretary of the Budget certifies under subsection (e) that the sufficient surplus revenues will not exist, indebtedness of the authority shall remain subject to subsection (c)(2), and, upon publication of a certification under subsection (e) that sufficient surplus revenues will exist, the board may adopt a resolution authorizing the incurring of additional indebtedness subject to subsection (c)(3).

(3) For the fiscal year following the adoption of a resolution under paragraph (2), unless the Secretary of the Budget certifies under subsection (e) that the sufficient surplus revenues will not exist, the board may adopt a resolution authorizing the incurring of additional indebtedness subject to the limitation of subsection (c)(4). If the Secretary of the Budget certifies under subsection (e) that the sufficient surplus revenues will not exist, indebtedness of the authority shall remain subject to subsection (c)(3), and, upon publication of a certification under subsection (e) that sufficient surplus revenues will exist, the board may adopt a resolution authorizing the incurring of additional indebtedness subject to subsection (c)(4).

§ 1544. Use.

(a) General rule.—Money of the authority shall be used by the board to fund the programs established in Subchapter E (relating to programs) and in 12 Pa.C.S. Ch. 29 (relating to machinery and equipment loans).

(b) Transfer.—By December 31, 2006, the authority shall transfer in the aggregate \$75,000,000 to the department for deposit in the account created by 12 Pa.C.S. § 2904 (relating to Machinery and Equipment Loan Fund).

(c) Administrative expenses.—The authority may use moneys, including the proceeds of bonds, to pay the administrative expenses of the authority and of the department incurred under this chapter.

## SUBCHAPTER E PROGRAMS

Sec.

1551. Business in Our Sites Program.

1552. First Industries Program.

1553. Second Stage Loan Program.

1554. New Pennsylvania Venture Guarantee Program.

1555. Building Pennsylvania Program.

1556. Tax Increment Financing Guarantee Program.

1557. New Pennsylvania Venture Capital Investment Program.

§ 1551. Business in Our Sites Program.

(a) Establishment.—There is established a program to be known as the Business in Our Sites Program. The program shall provide financial assistance for the preparation of sites located within this Commonwealth for future development.

(b) Applications for planning grants.—A municipality, municipal authority, redevelopment authority or industrial development agency may submit an application to the authority requesting a planning grant for costs associated with predevelopment activities and feasibility studies for a project. The application shall be on the form required by the board and shall include or demonstrate all of the following:

(1) The applicant's name and address.

(2) The location of the project.

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

(4) A description of the project which includes a statement that:

(i) the project is for the redevelopment, reuse or revitalization of previously developed land, including previously mined areas; or

(ii) the project is for the development of undeveloped land which may be the subject of future development pursuant to any existing comprehensive municipal plan.

(5) An estimate of the cost of the predevelopment activities and feasibility studies.

(6) A statement of the amount of the planning grant sought.

- (7) Any other information required by the board.
- (c) Review and approval of planning grant applications.—
  - (1) The board shall review the application. Upon being satisfied that all requirements have been met, the board may approve the application and, if approved, the authority shall award a planning grant.
  - (2) Copies of all reports and studies prepared with planning grant funds shall be filed with the authority and shall be made available to any person upon request.
- (d) Applications for project financing.—A municipality, municipal authority, redevelopment authority or industrial development agency may submit an application to the authority requesting a loan or a combination of a loan and project grant for a project. A private developer may submit an application to the board requesting a loan for a project. The application shall be on the form required by the board and shall include or demonstrate all of the following:
  - (1) The applicant's name and address.
  - (2) The location of the project.
  - (3) A statement that the project is consistent with any existing comprehensive county plan where the project is located.
  - (4) A description of the project which includes a statement that:
    - (i) the project is for the redevelopment, reuse or revitalization of previously developed land, including previously mined areas; or
    - (ii) the project is for the development of undeveloped land which may be the subject of future development pursuant to any existing comprehensive municipal plan and is zoned for such development at the time of application.
  - (5) An estimate of the cost of the project, prepared by an engineer or other qualified professional.
  - (6) A statement of the amount of the loan or combined loan and project grant sought. If the applicant is requesting a project grant, a statement as to the financial necessity for the project grant must be included.
  - (7) Proof that notification of the project has been sent to the governing bodies of the county or counties and of the municipality or municipalities in which the project is located.
  - (8) Any other information required by the board.
- (e) Review of project financing applications.—The board shall review the application to determine all of the following:
  - (1) That the project is consistent with any existing comprehensive county plan where the project is located.
  - (2) That the project is the redevelopment, reuse or revitalization of previously developed land, including previously mined areas, or that the project is the development of undeveloped land which may be the subject of future development pursuant to any existing comprehensive municipal plan and is zoned for such development at the time of application.



(3) That the value of the proposed collateral and the financial resources offered by the applicant are sufficient to repay the loan.

(4) That there is a substantial likelihood the land or buildings will be used upon project completion.

(5) That the project will enable future employment opportunities in or have a net positive economic impact on the surrounding community.

(6) That the statement of the estimated cost of the project is reasonable.

(7) That the applicant complied with all other criteria established by the board.

(f) Approval of project financing applications.—Upon being satisfied that all requirements have been met, the board may approve the application, and, if approved, the authority shall award a loan or a combination of a loan and project grant to be used for costs of the project. A combined loan and project grant may be awarded only if the board finds that the value of the proposed collateral and the financial resources offered by the applicant are not sufficient to repay a loan in the amount of the total project cost.

(g) Limitations.—

(1) A planning grant awarded for a project under section (c) shall not exceed \$250,000. No more than \$10,000,000 of the funds made available for the program authorized by this section may be used for planning grants.

(2) A project grant awarded under subsection (f) shall not exceed 50% of the total amount of financing awarded by the board for the project or \$5,000,000, whichever is less. No more than one-third of the funds made available for the program authorized by this section may be used for all project grants.

(3) No more than 15% of the funds made available for the program authorized by this section may be awarded for projects located within any one city, town, borough or township of this Commonwealth.

(4) The anticipated use of the land or buildings may not be primarily residential or primarily recreational.

(5) A project grant may be used only for one or more of the following purposes:

(i) Environmental assessment and remediation.

(ii) Site preparation, including earth moving activities.

(iii) Demolition of structures.

(iv) Installation or rehabilitation of infrastructure.

(v) Reimbursement of engineering and administrative expenses associated with any of the activities listed in subparagraphs (i) through (iv).

§ 1552. First Industries Program.

(a) Establishment.—There is established a program to be known as the First Industries Program. The program shall provide financial assistance for projects related to tourism and agriculture located within this

Commonwealth. The board shall allocate funds made available to the program among the different methods of financing authorized in this section.

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

(1) The applicant's name and address.

(2) The location of the project.

(3) A description of the project.

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

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

(6) Any other information required by the board.

(c) Review and approval of planning grant applications.—

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

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

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

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

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

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

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

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

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

(d) Loans to applicants.—If the department approves an application for a loan under the programs established in 12 Pa.C.S. Ch. 23 (relating to small business first) or 29 (relating to machinery and equipment loans), the department may request that the authority finance the loan. Upon being

satisfied that the project is related to agriculture or tourism, the board may approve the request, and, if approved, the authority shall award a loan. Loans made under this subsection shall be administered by the department. Payments received shall be forwarded to the authority and credited to the account established in accordance with section 1542(b) (relating to revolving loan program accounts).

(e) Loan guarantees.—

(1) An applicant may request a guarantee for a loan to be made by a commercial lending institution to assist with the financing of a project related to tourism or agriculture. The applicant may be the commercial lending institution applying on behalf of a borrower. The application must be on the form required by the board and must include or demonstrate all of the following:

(i) The applicant's name and address. If the applicant is a commercial lending institution, the borrower's name and address.

(ii) A description of the project.

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

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

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

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

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

(viii) Any other information required by the board.

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

(i) That the project has been awarded a planning grant under this section or that at least \$1,000,000 of private funds are being invested in the project.

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

(iii) That the applicant complied with all other criteria established by the board.

(3) Upon being satisfied that all requirements have been met, the board may approve the guarantee, and, if approved, the authority shall execute a guarantee agreement in favor of the commercial lending institution stating the terms and amounts of the guarantee. The guarantee may not exceed 50% of the outstanding principal amount of the loan or \$2,500,000 at any point in time, whichever is less. In addition to any other

terms and conditions required by the board, the guarantee agreement shall provide for all of the following:

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

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

(iii) Periodic reporting requirements by the commercial lending institution regarding itself and regarding the loans which have been awarded guarantees under this section.

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

(f) Limitations.—

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

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

#### § 1553. Second Stage Loan Program.

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

(b) Application for enrollment.—A commercial lending institution may apply for enrollment in the program authorized by this section. The application shall be on the form prescribed by the board and shall include or demonstrate all of the following:

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

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

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

(4) Any other information required by the board.

(c) Enrollment approval.—Upon being satisfied that all requirements have been met, the board may enroll the commercial lending institution in the program authorized by this section, and, if enrolled, the authority shall

execute a master guarantee agreement in favor of the commercial lending institution. In addition to any other terms and conditions required by the board, the master guarantee agreement shall provide for the following:

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

(2) A requirement that a percentage of any moneys recovered by the commercial lending institution subsequent to any payment made under the master guarantee agreement by the authority be remitted to the authority.

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

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

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

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

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

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

(5) Any other information required by the board.

(e) Application review.—

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

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

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

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

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

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

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

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

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

(f) Limitations.—

(1) During the first two years of the term of a loan for which a guarantee certificate has been issued, the guarantee may not exceed 50% of the outstanding principal amount of the loan. From the end of year two through either the end of year seven or the end of the term of the loan, whichever occurs first, the guarantee may not exceed 25% of the outstanding principal amount of the loan. The guarantee will terminate at the end of seven years.

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

§ 1554. New Pennsylvania Venture Guarantee Program.

(a) Establishment.—There is established a program to be known as the New Pennsylvania Venture Guarantee Program. The program shall provide guarantees to venture capital partnerships for investments in Pennsylvania-related companies which are in the early stage or mid-stage of development.

(b) Guarantee applications.—A venture capital partnership may submit an application to the authority requesting a guarantee of investments of principal to be made in Pennsylvania-related companies. The application shall be on the form prescribed by the board and shall include or demonstrate all of the following:

(1) The applicant's name and address and the address of all of the applicant's offices located in Pennsylvania.

(2) The resumes of the individuals responsible for the investment decisions of the applicant.

(3) A history of the applicant's development, operations, accomplishments and historical investment returns, including past performance of principals and partners and the applicant's history of investments in Pennsylvania-related companies.

(4) The applicant's business plan, which may be a private placement memorandum pursuant to 17 CFR §§ 230.501 through 230.508 (relating to Regulation D—rules governing the limited offer and sale of securities without registration under the Securities Act of 1933).

(5) A description of the intended industry sectors and stage of investment in which the applicant will invest and the anticipated amount of investment to be made in Pennsylvania-related companies.

(6) A statement of any recent changes in the principals or partners of the applicant.

(7) A statement of the fees or other payment proposed to be paid to the authority by the applicant as consideration for the issuance of a guarantee.

(8) Any other information required by the board.

(c) Application review.—The board shall review the application to determine all of the following:

(1) That the managing partner of the applicant has managed one or more venture capital partnerships which have performance rankings in the top quartile nationwide when compared to other venture capital partnerships with similar investments made over the same period of time.

(2) That the applicant will invest at least \$15,000,000 in Pennsylvania-related companies.

(3) That the applicant will agree to notify the board of all advisory, valuation and annual meetings of the applicant for the duration of the guarantee and will permit a representative of the board to attend such meetings. The board may request that the applicant provide reimbursement for reasonable travel expenses if meetings are held outside of the Commonwealth or that a board representative be able to participate in meetings by acceptable telecommunication means.

(4) That the applicant has or will open an office in Pennsylvania staffed with at least one senior-level partner and will maintain the office for the duration of the guarantee.

(5) That the applicant will provide the board with its annual financial statements, audited by a nationally recognized independent certified public accountant, for the duration of the guarantee. Financial statements shall be prepared in accordance with generally accepted accounting principles.

(6) That the board will have the ability to determine that the subject of a proposed investment to be covered by the guarantee is a Pennsylvania-related company acceptable to the board prior to the applicant making an investment in the company.

(7) That the applicant has complied with all other requirements established by the board.

(d) Approval of guarantee.—Upon being satisfied that all requirements have been met, the board may approve the application, and, if approved, the authority shall execute a guarantee agreement in favor of the applicant. In addition to any other terms and conditions required by the board, the guarantee agreement shall provide for all of the following:

(1) The procedure for the submission of a claim for payment under the guarantee agreement. A venture capital partnership will be required to have an audit performed by a nationally recognized independent certified public accounting firm prior to notifying the board that it is making a claim under the guarantee. No claim may be made prior to the completion of the seventh year following the first investment by the applicant in a Pennsylvania-related company which is covered by the guarantee.

(2) A provision that the guarantee will cover the first loss of the aggregate amount of principal invested in Pennsylvania-related companies covered by the guarantee.

(3) A procedure and schedule for the periodic reconciliation of amounts payable under the guarantee.

(4) A requirement that any increase in the valuation of investments in Pennsylvania-related companies covered by the guarantee subsequent to the payment of a claim by the authority will result in a portion of the payment being returned to the authority.

(5) A procedure for an expeditious process for the board to determine that proposed investments to be covered by the guarantee will be made to Pennsylvania-related companies acceptable to the board.

(6) A prohibition against the transfer of the benefits of the guarantee to another person without the prior approval of the board.

(e) Limitations.—

(1) The liability of the authority for any guarantee approved under this section shall be limited to the approved amount of that guarantee.

(2) A guarantee approved by the board shall not exceed 50% of the total investments made in Pennsylvania-related companies covered by the guarantee or \$37,500,000, whichever is less.

(3) The board may approve one or more guarantees not to exceed \$50,000,000 in the aggregate for venture capital partnerships in which the State Employees' Retirement System or the Public School Employees' Retirement System is a limited partner.

(4) Applications for guarantees may be accepted until July 1, 2007, or until the aggregate of approved guarantees equals \$250,000,000, whichever occurs first.

#### § 1555. Building Pennsylvania Program.

(a) Establishment.—There is established a program to be known as the Building Pennsylvania Program. The program shall provide loans to fund managers for investment in real estate projects within this Commonwealth.

(b) Requests for proposals.—The board shall issue one or more requests for proposals in accordance with 62 Pa.C.S. § 518 (relating to competitive selection procedures for certain services) for fund managers. Each request for proposals shall include all of the following:

(1) A statement that the service being requested is the investment in real estate projects located in this Commonwealth which will be acquired and developed, redeveloped or revitalized.

(2) A request to supply all of the following information:

(i) The fund manager's name and address.

(ii) The resumes of the individuals responsible for the investment decisions of the fund manager.

(iii) The fund manager's history of investments in real estate projects, including the number of previous investments, rates of return and capital raised.



(iv) A description of the proposed approach by the fund manager to investments in real estate projects located in this Commonwealth.

(v) The fund manager's history of investments in this Commonwealth.

(vi) The fund manager's understanding of this Commonwealth's geography and economic climate.

(vii) A statement by the fund manager of the amount of the loan being requested.

(3) Any other information required by the board.

(c) Review of proposals.—The board shall review the proposals and determine the fund manager or managers best qualified to provide the services described in the request for proposals. If the board determines that no fund manager is qualified, the board may reissue requests for proposals in accordance with this section.

(d) Contract negotiations.—The board shall select for contract negotiation one or more fund managers who are determined to be the best qualified to provide the services described in the request for proposals.

(e) Award.—The authority may enter into contracts with one or more fund managers. The contracts shall include all of the following provisions:

(1) The terms of repayment of principal and payment of interest and other return to the authority.

(2) That the fund manager will raise and invest in real estate projects located in this Commonwealth at least \$1 of nonpublic equity for every \$1 of loan funds received by the fund manager under this section.

(3) That the fund manager will exercise the standard of care in its responsibilities set forth in subsection (f).

(4) That the fund manager will provide the board with its annual audited financial statements for the duration of the loan. Financial statements shall be prepared in accordance with generally accepted accounting principles.

(5) That the fund manager will invest in industrial, commercial and multiuse real estate projects located in this Commonwealth which will be acquired and developed, redeveloped or revitalized in accordance with the provisions of this section.

(6) Any other provisions required by the board.

(f) Standard of care.—A fund manager awarded a contract under this section shall exercise that degree of judgment, skill and care under the circumstances then prevailing which persons of prudence, discretion and intelligence who are familiar with such matters exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of funds, considering the probable income to be derived therefrom as well as the probable safety of their capital.

(g) Limitations.—

(1) At least 50% of the funds made available for the program authorized by this section must be utilized for projects located in areas other than cities of the first or second class.

(2) No investments may be made by a fund manager in real estate projects which are primarily residential or primarily recreational.

§ 1556. Tax Increment Financing Guarantee Program.

(a) Establishment.—There is established a program to be known as the Tax Increment Financing Guarantee Program. The program shall provide guarantees for tax increment financing bonds or other indebtedness issued in accordance with the act of July 11, 1990 (P.L.465, No.113), known as the Tax Increment Financing Act.

(b) Applications for guarantees.—An issuing authority may submit an application to the authority requesting a guarantee of bonds or other indebtedness to be issued pursuant to the Tax Increment Financing Act. The application must be on the form required by the board and must include or demonstrate all of the following:

(1) The issuing authority's name and address.

(2) The location of the project.

(3) A description of the project which includes a statement that the project is for the:

(i) redevelopment, reuse or revitalization of previously developed land, including previously mined areas; or

(ii) development of undeveloped land which may be the subject of future development pursuant to any existing comprehensive municipal plan and is zoned for that development at the time of application.

(4) That the requirements of the Tax Increment Financing Act will be complied with prior to the issuance of bonds or other indebtedness by the issuing authority.

(5) That the incremental tax revenues to be realized from the project will be sufficient to offset the amount of debt service to be paid on the bonds or other indebtedness to be issued by the issuing authority.

(6) The amount of the guarantee sought.

(7) Any other information required by the board.

(c) Review of guarantee applications.—The board shall review the application to determine all of the following:

(1) That the project is consistent with any existing comprehensive county plan where the project is located.

(2) That the project is for the:

(i) redevelopment, reuse or revitalization of previously developed land, including previously mined areas; or

(ii) development of undeveloped land which may be the subject of future development pursuant to any existing comprehensive municipal plan and is zoned for that development at the time of application.

(3) That the incremental tax revenues to be realized as a result of the project are sufficient to repay the bonds or other indebtedness issued.

(4) That the project and the proposed bond issue or issuance of debt complies with the requirements of the Tax Increment Financing Act.

(5) That the issuing authority complied with all other criteria established by the board.

(d) Approval of guarantee applications.—Upon being satisfied that all requirements have been met, the board may approve the application, and, if approved, the authority shall execute a guarantee agreement in favor of the issuing authority. In addition to any other terms and conditions required by the board, the guarantee agreement shall provide for the following:

(1) The procedure for the submission of a claim for payment under the guarantee agreement. If the authority makes payment on a claim for payment submitted under the guarantee agreement, the authority may assume all rights and privileges previously belonging to the bondholders or the holders of the debt and may renegotiate the terms of repayment of the debt assumed by the authority under terms as the authority deems appropriate.

(2) Annual reporting by the issuing authority on the status of the project, including the amount of the annual debt service and the annual value of the incremental tax revenues.

(e) Limitations.—No guarantee approved by the board may exceed \$5,000,000.

#### § 1557. New Pennsylvania Venture Capital Investment Program.

(a) Establishment.—There is established a program to be known as the New Pennsylvania Venture Capital Investment Program. The program shall provide loans to venture capital partnerships for investment in Pennsylvania-related companies. The nature of the investments shall be equity or convertible debt.

(b) Applications.—A venture capital partnership seeking to make investments in Pennsylvania-related companies may submit an application for a loan to the authority. The application must be on the form required by the board and shall include or demonstrate all of the following:

(1) The applicant's name.

(2) The address of the applicant and a list of all offices of the applicant located in this Commonwealth.

(3) The applicant's business plan, which may be a private placement memorandum pursuant to 17 CFR §§ 230.501 through 230.508 (relating to Regulation D—rules governing the limited offer and sale of securities without registration under the Securities Act of 1933).

(4) A history of the applicant's development, operations, accomplishments and historical investment returns, including past performance of principals and partners.

(5) A description of the intended industry sectors and stage of investment in which the applicant will invest.

(6) A description of the applicant's current and proposed relationship with organizations in this Commonwealth that foster economic development.

(7) Any other information required by the board.

(c) Application review.—The board shall review the application to determine all of the following:

(1) If the applicant has invested in Pennsylvania-related companies in the past.

(2) If the applicant has demonstrated strong relationships with organizations in this Commonwealth which foster economic development.

(3) That the applicant has demonstrated a satisfactory investment performance record.

(4) That the applicant has demonstrated that it can and will raise and invest in Pennsylvania-related companies at least \$1 of nonpublic equity for every \$1 of loan funds received by the applicant under this section.

(5) That the applicant has or will open an office in Pennsylvania staffed with at least one senior-level partner and will maintain such office for the duration of the loan.

(6) That the applicant complied with all other criteria established by the board.

(d) Approval of the applications.—

(1) Upon being satisfied that all requirements have been met, the board may approve the application, and, if approved, the authority shall award a loan. The board shall establish the term of repayment of principal and payment of interest and other return to the authority and all other terms and conditions of the loan consistent with the provisions of this section.

(2) In approving applications, the board shall consider whether an applicant has had an office in this Commonwealth for at least the 12 months immediately preceding the date of the applicant's application.

(e) Limitation.—

(1) All loans awarded to venture capital partnerships under this section and the matching nonpublic equity shall be invested in Pennsylvania-related companies.

(2) At least 50% of the funds made available for the program under this section shall be used to make loans for investments in Pennsylvania-related companies located in Pennsylvania counties which are outside the Philadelphia Metropolitan Statistical Area and which have a population of 1,000,000 or less, based on the 2000 Decennial Census of the Bureau of the Census.

(3) At least 50% of the funds made available for the program under this section shall be used to make loans to venture capital partnerships which have primary offices staffed with at least one senior-level partner located in Pennsylvania counties which are outside the Philadelphia

Metropolitan Statistical Area and which have a population of 1,000,000 or less, based on the 2000 Decennial Census of the Bureau of the Census.

Section 2. The heading of Part II of Title 64 is amended to read:

**PART [II] III**  
**PUBLIC AUTHORITIES**

Section 3. The General Assembly finds and declares that authorized investments, loans and guarantees made under 64 Pa.C.S. Ch. 15, whereby the authority becomes a joint owner, member, limited partner or stockholder in, lender to or guarantor of obligations of a company, corporation, limited partnership, company, association or other lawful business organization, are outside the scope of the original intent of and do not violate the prohibition set forth in section 8 of Article VIII of the Constitution of Pennsylvania.

Section 4. Money appropriated to the Department of Community and Economic Development for the prevention of military base realignment and closure shall be used for all of the following:

(1) The development of a Statewide strategy.

(2) Grants for economic impact studies, environmental impact studies, encroachment studies, community and regional interaction with military bases, infrastructure needs at military bases and job training needs at or near military bases. Grants shall be awarded by the Base Retention and Conversion Pennsylvania Action Committee.

Section 5. Section 5 of the act of February 12, 2004 (P.L.99, No.12), entitled "An act amending Title 12 (Commerce and Trade) of the Pennsylvania Consolidated Statutes, codifying portions of the Job Enhancement Act; further providing for contract requirements, for guidelines, for administration and for application and review requirements; providing for Keystone Innovation Zones; and making repeals relating to the Job Enhancement Act," is repealed.

Section 6. Severability shall be as follows:

(1) Except as set forth in paragraph (2):

(i) The provisions of this act are severable.

(ii) If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

(2) If 64 Pa.C.S. § 1511 or 1512 or the application of either provision to any person or circumstance is held invalid, the remaining provisions or applications of this act are void.

Section 7. This act shall take effect immediately.

APPROVED—The 1st day of April, A.D. 2004.

EDWARD G. RENDELL