

No. 359

AN ACT

HB 2420

Amending the act of August 23, 1967 (P.L.251), entitled, as amended, "An act providing for the incorporation as public instrumentalities of the Commonwealth and as bodies corporate and politic of industrial and commercial development authorities for municipalities, counties and townships; prescribing the rights, powers and duties of such authorities hereafter incorporated; authorizing such authorities to acquire, by gift or purchase, to construct, improve and maintain industrial or commercial development projects, and to borrow money and issue bonds therefor; providing for the payment of such bonds and giving security therefor, and prescribing the rights of the holders of such bonds; authorizing the lease or sale of industrial or commercial development projects to industrial, commercial, manufacturing or research and development enterprises; authorizing any county, municipality or township to transfer or convey to such authorities, any facilities or property available for industrial or commercial development projects; exempting the property and securities of such authorities from taxation; authorizing such authorities to enter into contracts with and to accept grants from the Federal Government or any agency thereof; and providing for approval by the Secretary of Commerce of the proceedings relating to industrial or commercial development projects of such authorities," further providing for findings and declaration of policy; changing and adding certain definitions; and further providing for purposes and powers, promulgation of regulations and competition in award of contracts.

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

Section 1. The title, section 2, clauses (10), (12.1), (16) and (17) of section 3, act of August 23, 1967 (P.L.251), amended or added December 29, 1971 (P.L.647), known as the "Industrial and Commercial Development Authority Law," are amended and section 3 is amended by adding a clause to read:

AN ACT

Providing for the incorporation as public instrumentalities of the Commonwealth and as bodies corporate and politic of industrial and commercial development authorities for municipalities, counties and townships; prescribing the rights, powers and duties of such authorities hereafter incorporated; authorizing such authorities to acquire, by gift or purchase, to construct, improve and maintain industrial or commercial development projects *including projects for the elimination or prevention of blight and the control of air and water pollution*, and to borrow money and issue bonds therefor; providing for the payment of such bonds and giving security therefor, and prescribing the rights of the holders of such bonds; authorizing the lease or sale of industrial or commercial development projects to industrial, commercial, manufacturing or research and development enterprises; authorizing any county, municipality or township to transfer or convey

to such authorities, any facilities or property available for industrial or commercial development projects; exempting the property and securities of such authorities from taxation; authorizing such authorities to enter into contracts with and to accept grants from the Federal Government or any agency thereof; and providing for approval by the Secretary of Commerce of the proceedings relating to industrial or commercial development projects of such authorities.

Section 2. Findings and Declaration of Policy.—It is hereby determined and declared as a matter of legislative finding:

(1) That economic insecurity due to unemployment is at any time a serious menace to the health, safety, morals and general welfare of the people of the Commonwealth and that a high level of unemployment and lack of business opportunity *particularly in areas of urban and rural blight* are threats to the strength and permanence of American political and economic institutions and the philosophy of freedom on which those institutions are based;

(2) That a minimum level of unemployment and a maximum level of business opportunity, *and the elimination or prevention of blight* can best be provided by the promotion, attraction, stimulation, rehabilitation and revitalization of industry, commerce, manufacturing and research and development in the Commonwealth;

(3) That the present and prospective health, safety, morals and general welfare of the people of the Commonwealth require as a public purpose the promotion and development of new, expanded and rehabilitated industrial, commercial, manufacturing and research and development enterprises;

(4) That the creation and operation of The Pennsylvania Industrial Development Authority has proved highly successful in attracting industry and the resultant employment and business opportunities to critical areas of unemployment within the Commonwealth;

(5) That to continue and further the successful program of The Pennsylvania Industrial Development Authority, it is necessary to provide additional means of financing the promotion and development of new, expanded and rehabilitated industrial, commercial, manufacturing and research and development facilities, including in conjunction therewith the financing of machinery and equipment;

(6) That many existing industrial, commercial, manufacturing and research and development enterprises throughout the Commonwealth could become more competitive and could expand more rapidly if such additional means of financing were available for modern buildings, plant facilities and modern machinery and equipment;

(7) That additional industrial, commercial, manufacturing and research and development facilities could be attracted to the Commonwealth if such additional means of financing were available to construct, rehabilitate and expand industrial or commercial buildings, or

plants and in conjunction therewith equip the same with modern machinery and equipment;

(8) *That by reason of the unavailability of private credit sources redevelopment areas in cities of the Commonwealth have remained unimproved and the residents of core areas of cities of the Commonwealth and in particular minority groups are denied the benefits of balanced industrial, commercial and residential environment and a balance of employment, cultural, and business opportunities;*

(9) *That the provisions of the Constitution of Pennsylvania guaranteeing the residents of the Commonwealth clean air and water and their implementation through the establishment of quality standards relating to abatement or elimination of air and water pollution have resulted in the need for additional means of financing to assist and encourage industrial manufacturing, research and development, agricultural and utility enterprises to comply with such air and water pollution control standards.*

Therefore, it is hereby declared to be the policy of the Commonwealth of Pennsylvania to promote the health, safety, morals, employment, business opportunities and general welfare of the people thereof by providing for the creation of industrial or commercial development authorities which shall exist and operate as public instrumentalities of the Commonwealth for the public purpose of alleviating unemployment, maintaining employment at a high level, *eliminating and preventing blight and eliminating or reducing air and water pollution*, and creating and developing business opportunities by the construction, improvement, rehabilitation, revitalization and financing of industrial, commercial, manufacturing and research and development enterprises. Such purpose is hereby declared to be a public purpose.

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

* * *

(10) “Industrial development project” or “project” means any building or facility or combination or part thereof or pollution control facilities occupied or utilized by an industrial, manufacturing, or research and development enterprise, or, in the case of pollution control facilities, occupied or utilized by a **[public utility, a railroad company]** *utility or agricultural enterprise* or by a company engaged in the extraction of any mineral coal, oil or natural resources, located within or without or partially within or without the municipality creating the authority, now existing or hereafter acquired or constructed by the authority pursuant to the terms of this act, including any or all buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, franchises, machinery, equipment, furnishings, landscaping, utilities, railroad spurs and sidings, wharfs, approaches and roadways necessary or desirable in connection therewith or incidental thereto.

* * *

(12.1) "Commercial enterprise" means a business enterprise other than one used for industrial purposes, which by virtue of its size requires substantial capital and which by its nature and size has created or will create substantial employment opportunities. The term "commercial enterprise" may include office buildings, hotel or motel structures, shopping centers and department stores and national and regional headquarters facilities: *Provided, however, That with respect to redevelopment pursuant to a redevelopment proposal, there shall be no requirement concerning the expenditure of substantial capital or the creation of substantial employment opportunities.*

* * *

(16) "Investor-developer" means any person, partnership or corporation engaged in the development *for use by commercial and or industrial occupants of one or more commercial development projects* and or industrial [enterprises] *development projects* and determined by the authority to be financially responsible to assume all obligations prescribed by the authority and this act in the acquisition, development, construction, leasing, sale, operation and financing in whole or in part of a commercial development project or an industrial development project.

(17) "Pollution control facilities" means any property, real or personal which is to be used to abate or reduce or aid in the prevention, control, disposal or monitoring of noise, air, [pollutants] water [pollutants] *or thermal pollution*, solid waste or other pollutants without limitation thereto and may include property or equipment which is to be installed primarily to supplement or to replace existing property or equipment not meeting acceptable pollution control standards or which is to be supplemented or replaced to comply with an order or citation to eliminate pollution issued by any Federal, State or local authority having jurisdiction.

* * *

(21) "*Redevelopment proposal*" shall mean a proposal, including a copy of the redevelopment area plan and supporting data submitted for approval to the governing body by an authority, for the development of all or any part of a redevelopment area. A redevelopment area shall be determined by the provisions of the act of May 24, 1945 (P.L.991), known as the "Urban Redevelopment Law."

Section 2. Clauses (8), (9) and (16) of subsection (b) of section 6 of the act, amended or added December 29, 1971 (P.L.647), and September 1, 1972 (Act No. 2, Special Session No. 1), are amended to read:

Section 6. Purposes and Powers; General.—* * *

(b) Every authority is hereby granted, and shall have and may exercise all powers necessary or convenient for the carrying out of the aforesaid purposes, including but without limiting the generality of the foregoing, the following rights and powers:

* * *

(8) To enter into acquisition agreements providing for (i) the construction of industrial or commercial development projects by either the authority or the industrial or commercial occupant; (ii) the financing of industrial and commercial development projects to be constructed initially by an industrial or commercial occupant if prior to the commencement of construction an agreement as to financing is entered into between the authority and the industrial or commercial occupant; (iii) the financing of improvements to existing industrial or commercial development projects if the existing project is owned by the authority or will be conveyed in fee to the authority, free and clear of all encumbrances and without consideration; (iv) the leasing or sale of the industrial or commercial development projects to the industrial or commercial occupants *or to an investor-developer* as hereinafter provided; and (v) the financing of the activities of investor-developers in any activity set forth in (i), (ii), [or] (iii) *or (iv)* above.

(9) To enter into agreements of lease or sale with industrial or commercial occupants *or investor-developers* providing, inter alia, (i) for the leasing or sale of industrial and commercial development projects to the industrial or commercial occupants *or investor-developers* for a term of years not to extend beyond the term of existence of the authority; (ii) for a rental or other payments sufficient to amortize the principal, interest and premium, if any, of all bonds and other obligations of the authority incurred to pay the costs of the industrial or commercial development project to be leased or sold; (iii) for the industrial or commercial occupant *or investor-developer* to pay to the authority or to otherwise assume and pay all other costs of maintaining and operating the project; (iv) provisions, if deemed desirable, that the industrial or commercial occupant *or investor-developer* of a project pursuant to a lease shall have the options to renew such lease or to purchase any or all of such project, or upon payment of all bonds and other obligations of the authority incurred with respect to such project, the authority may convey any part or all of said project to the industrial or commercial occupants *or investor-developers* with or without consideration; and (v) such other provisions as are customary in such leases or agreements of sale or as may be deemed necessary or convenient by the authority.

* * *

(16) Recognizing the necessity for enterprises to immediately commence rehabilitation work *and pollution control facilities*, no disaster relief project *or project consisting of pollution control facilities* shall be rejected by the Secretary of Commerce *or be otherwise disqualified under this act* on the grounds that the project has commenced or has been completed, provided that *in respect to a disaster relief project* an application for approval by the secretary is submitted to the Department of Commerce prior to January 1, 1973.

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Section 3. Subsection (f) of section 7 of the act, amended December 29, 1971 (P.L.647), is amended and the section is amended by adding a subsection to read:

Section 7. Purposes and Powers; Bonds.—* * *

(f) No bonds shall be issued and sold and the construction of a project shall not be commenced until the proceedings to be undertaken in respect of the issuance and sale of the bonds and the construction of the project have been first approved by the secretary: *Provided, That construction of disaster relief projects and projects consisting of pollution control facilities may be commenced prior to the approval of the secretary: And provided further, That in respect to disaster relief projects, an application for approval in respect thereof is submitted to the secretary prior to January 1, 1973.* The chairman of the authority shall cause to be certified under seal of the authority and delivered to the secretary such documents relating to the proceedings as may be necessary and as may be required by the secretary to enable him to determine that:

- (1) The project does not violate section 6 (d) hereof;
- (2) The lease or agreement of sale is in accordance with section 6 (b) (9) hereof;
- (3) The proceedings are in conformity with this act, and
- (4) The industrial and commercial development project will accomplish the public purposes of this act.

If such proceedings are found to be in conformity with this act, the secretary shall within twenty days after receipt thereof approve the same and certify his approval to the authority.

If, upon examination, the secretary shall find that such proceedings are not in accordance with this act, he shall disapprove the same and shall within twenty days after receipt thereof certify his disapproval to the authority; thereafter, it shall be unlawful for such authority to issue any bonds upon such proceedings or to commence construction of the project unless the proceedings are corrected and as corrected have been approved by the secretary. If the secretary shall not have approved or disapproved the proceedings within such twenty days the same shall be deemed to have been approved. The decision of the secretary shall be final.

(g) The secretary may promulgate such regulations as he may deem necessary to carry out the purposes of this section 7.

Section 4. Subsection (a) of section 12 of the act, amended December 29, 1971 (P.L.647), is amended to read:

Section 12. Competition in Award of Contracts.—(a) All construction, reconstruction, repairs or work of any nature made directly by any authority, where the entire cost, value or amount of such construction, reconstruction, repairs or work, including labor and materials, shall exceed five thousand dollars (\$5,000), except construction, reconstruction, repairs or work done by employes of said authority, or by labor supplied

under agreement with any Federal or State agency, with supplies and materials purchased as hereinafter provided, shall be done only under contract or contracts to be entered into by the authority with the lowest responsible bidder upon proper terms, after due public notice has been given asking for competitive bids as hereinafter provided: Provided, however, That where the authority is the legal title holder to the industrial or commercial development project, and there exists an agreement whereby an industrial or commercial occupant *or an investor-developer* will or can acquire legal title to the said project under the then certain terms and conditions, contracts for construction, reconstruction, repair, or work of any nature, or purchase of machinery and equipment, may be awarded by the industrial or commercial occupant *or the investor-developer* without regard to the limitations of this section 12: And provided further, however, That for the purposes of this section 12, "construction" shall not include acquisition of property for industrial or commercial development purposes. No contract shall be entered into between an authority and a contractor for construction or improvement or repair of any project or portion thereof, unless the contractor shall give an undertaking with a sufficient surety or sureties approved by the authority, and in an amount fixed by the authority, for the faithful performance of the contract. All contracts of surety shall provide among other things that the contractor entering into a contract with the authority will pay for all materials furnished and services rendered for the performance of the contract, and that any person or corporation furnishing such materials or rendering such services may maintain an action to recover for the same against the obligor in the undertaking, as though such person or corporation was named therein, provided the action is brought within one year after the time the cause of action accrued.

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Section 5. This act shall take effect immediately.

APPROVED—The 29th day of December, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 359.



Secretary of the Commonwealth.