

No. 206

AN ACT

HB 1386

Creating the Pennsylvania Minority Business Development Authority as a governmental instrumentality and as a body corporate and politic; prescribing the rights, powers and duties of such authority; authorizing such authority to acquire by gift or purchase; to make loans, guarantees or other financial accommodations to minority business enterprises, to borrow money and issue bonds therefor, providing for the payment of such bonds and giving security therefor, prescribing the rights of the holders of such bonds; providing that no debt of the Commonwealth shall be incurred in the exercise of any powers granted by this act; exempting the property and securities of such authority from taxation; authorizing the authority to enter into contracts with and to accept grants from the Federal Government or any agency thereof; providing for the examination of the accounts and affairs of the authority; and making an appropriation.

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

Section 1. Short Title.—This act shall be known and may be cited as the “Pennsylvania Minority Business Development Authority Act.”

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

(1) That the promotion of economic development is a legitimate and necessary governmental function.

(2) That there currently exists in the Commonwealth a situation wherein there is a disproportionate share of business ownership by socially and economically disadvantaged persons, and those businesses which are minority-owned are predominately small retail service establishments.

(3) That such conditions are chronic and of long-standing and that without remedial measures there is little prospect for improvement in the near future, and the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic justice for such persons and improve the functioning of our economy.

(4) That the presence of viable minority enterprises will provide incentives as well as employment or business opportunities for youths which will add justification, strength and perseverance of their faith in our American political and economic institutions and the philosophy of freedom on which those institutions are based.

Therefore, it is hereby declared to be the policy of the Commonwealth of Pennsylvania to promote health, safety, morals, business opportunities and general welfare of all the inhabitants thereof by the creation of a body corporate and public to be known as the “Pennsylvania Minority Business Development Authority” which shall exist and operate for the public purposes of (i) alleviating and overcoming the many barriers to business opportunity that have too

long handicapped socially and economically disadvantaged persons; and (ii) providing assistance, financial and otherwise, which will contribute to well-balanced National and State economies by facilitating the acquisition or maintenance of ownership of business enterprises by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages. Such purposes are hereby declared to be public purposes for which public money may be spent.

(5) That it will benefit the Commonwealth as a whole if minority businessmen can acquire business assets at a lower cost and with greater facility than is now possible.

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

“Authority” shall mean the public body corporate and politic created pursuant to this act.

“Board” or “board of directors” means the governing body of the authority.

“Bonds” means and includes the notes, bonds, refunding notes and bonds and other evidence of indebtedness or obligations which the authority is authorized to issue pursuant to this act.

“Federal agency” means and includes the United States of America, the President of the United States of America, and any department of or corporation, agency or instrumentality heretofore or hereafter created, designated or established by the United States of America.

“Minority business enterprise” means a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons who are residents of the Commonwealth of Pennsylvania. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish-speaking Americans, American Indians, Eskimos and Aleuts.

“Secretary” means the Secretary of Commerce of this Commonwealth.

“Socially or economically disadvantaged persons” means persons, regardless of sex or marital status, who are members of groups whose disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish-speaking Americans, American Indians, Eskimos and Aleuts.

Section 4. Pennsylvania Minority Business Development Authority.—(a) There is hereby created a body corporate and politic, constituting a public corporation and governmental instrumentality by the name of the “Pennsylvania Minority Business Development Authority,” hereinafter known as the authority.

(b) The board of directors shall be composed of the following: The Secretary of Commerce, who will serve as chairman, the Secretary of Labor and Industry, the Secretary of Community Affairs, the Secretary

of Banking, or designee and twelve additional persons, at least four of whom shall represent socially or economically disadvantaged persons, two of whom shall be Representatives appointed by the Speaker of the House (one from the Majority Party and one from the Minority Party), two of whom shall be Senators appointed by the President pro tempore of the Senate (one from the Majority Party and one from the Minority Party) and who shall be appointed by the Governor with the advice and consent of the Senate. A quorum of this board shall be seven.

(c) The members of the board of directors of the authority initially appointed by the Governor shall continue in office for terms of one to four years, respectively, from the date of their appointment and until their respective successors shall be duly appointed and qualified, the term of each appointed member to be designated by the Governor at the time of his appointment; but their successors shall each be appointed for a term of five years, except that any person appointed to fill a vacancy shall serve only for the unexpired term, and any appointed member of the board of directors of the authority shall be eligible for reappointment.

(d) The board of directors, in its sole discretion, may appoint its own counsel and legal staff, and appoint such engineering, financial and other consultants and technicians as it may require.

(e) The board of directors shall have full authority to manage the properties and business of the authority, and to prescribe, amend and repeal by-laws, rules and regulations governing the manner in which the business of the authority may be conducted, and the powers granted to it may be exercised and embodied.

The Department of Commerce shall provide staff services including an executive director as agreed upon by the board to the authority for its administration of the act, including liaison between the authority and the Bureau of Minority Business Development (hereinafter authorized) and related organizations, and between the authority and other agencies of the Commonwealth whose facilities and services may be useful to the authority in its work.

The authority is authorized to make reimbursement to the Department of Commerce or to any agency of the Commonwealth for such special expenses as may be incurred in the provision of any services or the use of any facilities required by the authority.

(f) Said members of the board of directors of the authority shall be entitled to no compensation for their services as members, but shall be entitled to reimbursement for all necessary expenses incurred in connection with the performance of their duties as members of the board.

Section 5. Bureau of Minority Business Development.—There is hereby created a bureau within the Department of Commerce by the name of “Bureau of Minority Business Development.” The staff of said bureau, office space, supplies and other requirements will be provided

by the Department of Commerce at the discretion of the Secretary of Commerce. Said bureau shall coordinate all intergovernmental activities involving Federal and State agencies or State and local agencies which are intended to assist or otherwise to affect minority businesses, and shall have such other powers and duties as may be directed by the secretary, including, but not limited to the power to make grants to non-profit organizations for the purpose of allowing the recipients to purchase consulting and research services designed to result in reports that will potentially benefit businesses serving customers drawing ownership, management or staff from socially or economically disadvantaged groups.

Section 6. Activities and Powers of the Authority; General.—The authority, as a public corporation and governmental instrumentality exercising public powers of the Commonwealth, is hereby granted and shall have and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this act, including the following powers, in addition to others herein granted:

- (1) To have existence for a term of fifty years.
- (2) To sue and be sued, implead and be impleaded, complain and defend in all courts.
- (3) To adopt, use and alter at will a corporate seal.
- (4) To make bylaws for the management and regulation of its affairs.
- (5) To appoint officers, agents, employes and servants; and to prescribe their duties and to fix their compensation, within the limitations provided by law.
- (6) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.
- (7) Without limitation of the foregoing, accept grants from, and to enter into contracts or other transactions with any Federal agency, State agency, charitable or business organization.
- (8) To borrow money, make and issue negotiable notes, bonds, refunding bonds and other evidences of indebtedness or obligations (hereinafter called "bonds") of the authority, and to secure the payment of such bonds, or any part thereof, by pledge or deed of trust of all, or any, of its revenues, receipts and contract rights, or other assets, real or personal, and to make such agreements with the purchasers or holders of such bonds or with others in connection with any such bonds, whether issued or to be issued as the authority shall deem advisable, and in general to provide for the security for said bonds and the rights of the holders thereof.
- (9) To invest moneys not required for current expenditures, pending such expenditures, in any securities eligible for the investment of funds in the Commonwealth.
- (10) To mortgage, pledge, hypothecate or otherwise encumber, all or any of the revenues, receipts or contract rights, or other assets, real or

personal, of the authority as security for all, or any of, the obligations of the authority.

(11) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material for its information and necessary to (i) the determination of the applicant's eligibility to receive a loan granted under this act; (ii) the determination of the economic viability of the loan; and (iii) the power to review the operation of any business that has received a loan granted under the authority of this act.

(12) To issue subpoenas requiring the attendance of witnesses and the production of books and papers pertinent to any hearing before such authority, or before one or more members of the authority appointed by it to conduct such hearing.

(13) To apply to any court, having territorial jurisdiction of the offense, to have punished for contempt any witness who refuses to obey a subpoena, or who refuses to be sworn or affirmed or to testify, or who is guilty of any contempt after summons to appear.

(14) To authorize any member or members of such authority to conduct hearings and to administer oaths, take affidavits and issue subpoenas.

(15) To do all acts and things necessary or convenient to carry out the powers granted to it by this act or any other acts: Provided, however, That the authority shall have no power, at any time or in any manner, to pledge the credit or taxing power of the Commonwealth, nor shall any of its obligations or debts be deemed to be obligations of the Commonwealth, nor shall the Commonwealth be liable for the payment of principal or interest on such obligations.

Section 7. Activities and Powers of the Authority, Specific.—The authority shall have the power:

(1) To lend money to and to guarantee, endorse or act as surety on the bonds, notes, contracts or other obligations of, or otherwise assist financially, a minority business enterprise, and to establish and regulate the terms, security and conditions with respect to any such loans or financial assistance and the charges for interest and service connected therewith, all at the sole discretion of the board of directors.

(2) To guarantee up to fifty per cent of equity investments in a minority business enterprise made by any person, partnership, corporation or other entity not then an equity holder or involved in the management of the minority business enterprise or employed by said minority business enterprise or in any way related to said enterprise, its current shareholders, officers or other management personnel, any such guarantees to be made on such terms and conditions as may be determined by the board of directors in its sole discretion.

Section 8. Loans and Financial Participation by the Authority.—(a) The authority shall not make loans, guarantee loans or investments or provide other financial assistance pursuant to section 7

hereof unless a majority of the board of directors present at a meeting vote in favor of the action. A majority of members of the board of directors of the authority will constitute a quorum.

(b) Any loan or other financial assistance made by the authority as authorized in section 7 shall be for such period of time and shall bear interest at such rate as shall be determined by the authority and loans shall be evidenced by bond or note of the borrower and secured as may be required by the board of directors.

(c) Prior to the loaning of any funds or granting any financial assistance to a minority business enterprise, the authority shall receive from such prospective borrower an application in form adopted by the authority and abiding by any regulations established by the authority.

(d) No loan or other financial assistance shall be made or granted to a minority business enterprise unless the minority business enterprise certifies to the authority, in form satisfactory to the authority, that it shall not discriminate against any employee or against any applicant for employment because of race, religion, color, national origin, sex or age, including, but not limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The minority business enterprise shall also certify to the authority that it is not currently under citation for pollution violations, and that in the future it will meet all applicable anti-pollution standards.

Section 9. Rules and Regulations.—The authority shall have the right to adopt rules and regulations to carry out the provisions of this act in accordance with the provisions of the act of July 31, 1968 (P.L.769, No.240), known as the “Commonwealth Documents Law.”

Section 10. Moneys of the Authority.—All moneys of the authority from whatever source derived shall be paid to the treasurer of the authority. Said moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts, and each of such special accounts shall be continuously secured by a pledge of direct obligations of the United States of America or of the Commonwealth, having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account. Such securities shall either be deposited with the treasurer or be held by a trustee or agent satisfactory to the authority. All banks and trust companies are authorized to give such security for such deposits. The moneys in said accounts shall be paid out on the warrant or other order of the treasurer of the authority, or of such other person or persons as the authority may authorize to execute such warrants or orders.

Section 11. Minority Business Development Fund.—(a) There is hereby created a special account in the Treasury of the Commonwealth to be known as the “Minority Business Development Fund” to which

shall be accredited the appropriation provided by this act and any subsequent appropriations made by the Legislature to the authority as well as such other deposits and contributions as may be received from any other source by the authority, as well as such other deposits as this section provided.

(b) As often as may be necessary, the authority shall requisition from the Minority Business Development Fund such amounts as may be necessary to provide adequate funds for the payment of the administration of the purpose of this act.

(c) The authority shall also requisition, from time to time, from the Minority Business Development Fund, such amounts as shall be allocated and appropriated by the authority for loans or other financial assistance to minority business enterprises. When and as the amounts so allocated and appropriated by the authority as loans or other financial assistance are repaid to the authority pursuant to the terms of the bonds or notes or other agreements made and entered into by the authority, the authority shall pay such amounts into the Minority Business Development Fund, it being the intent of this act that the Minority Business Development Fund shall operate as a revolving fund whereby all appropriations, deposits, contributions and payments made thereto may be applied and reapplied to the purposes of this act.

(d) All appropriations, deposits and contributions made to the Minority Business Development Fund shall be immediately credited in full to said fund, and earnings on the moneys held in said fund shall also be credited to the fund for the purposes of this act.

(e) At any time that the authority shall determine that funds held for the credit of the Minority Business Development Fund are in excess of the amount needed by the authority to carry out the purposes of this act, the authority shall take such action as shall be required to release such excess from the Minority Business Development Fund and transfer the same to the General Fund of the State Treasury.

Section 12. Conflict of Interest Prohibited.—No member of the authority or officer or employee thereof shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the authority for any matter, cause or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such authority. If any contract or agreement shall be made in violation of the provisions of this section the same shall be null and void and no action shall be maintained thereon against such authority.

Section 13. Examination and Audit of Authority Affairs.—The accounts and books of the authority, including its receipts, disbursements, contracts, investments and other matters relating to its finances, operation and affairs shall be examined and audited from time to time by the Auditor General as provided in The Administrative Code of 1929.

Section 14. Bonds.—(a) The bonds of the authority shall be authorized by resolution of the board thereof or by the terms of a trust indenture authorized by such board, and shall be of such series, shall bear such date or dates, shall mature at such time or times, not exceeding the life of the authority, shall bear interest at such rate or rates, shall be in such denominations, shall be in such form, either coupon or fully registered without coupons, shall carry such registration, exchangeability and interchangeability privileges, shall be payable in such medium of payment and at such place or places, shall be subject to such terms of redemption, not exceeding one hundred five per cent of the principal amount thereof and shall be entitled to such priorities in the revenues or receipts of the authority as such trust, indenture, resolution or resolutions may provide. The bonds shall be signed by such officers, either manually or by facsimile as the authority shall determine, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of the treasurer of the authority, all as may be prescribed in such resolution or resolutions. Any such bonds may be issued and delivered, notwithstanding that one or more of the officers signing such bonds or the treasurer whose facsimile signature shall be upon the coupons or any thereof, shall have ceased to be such officer or officers at the time when such bonds actually shall be delivered. Said bonds may be sold at public or private sale for such price or prices as the authority shall determine. The net interest cost of maturity of the money received for any issue of bonds, whether sold at public or private sale, shall not exceed eight per cent per annum.

For the purposes of this section, net interest cost shall be determined by ascertaining the total amount of interest payable with respect to the bonds, computed from the date of the bonds to the stated maturity dates thereof, plus the amount of any discount from the principal amount of the bonds or less the amount of any premium in excess of the principal amount of the bonds. Pending the preparation of the definitive bonds, interim receipts may be issued to the purchaser or purchasers of such bonds, and may contain such terms and conditions as the authority may determine.

(b) Such bonds are hereby made securities in which all officers of the State and its political subdivisions and municipal officers and administrative departments, boards and commissions of the Commonwealth, all banks, bankers, savings banks, trust companies, saving and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries, and all other persons whatsoever who now or hereafter may be authorized to invest in bonds or other obligations of the Commonwealth, properly and legally may invest any funds, including capital, belonging to them or within their control, and said bonds or

other securities or obligations hereby are made securities which properly and legally may be deposited with, and received by, any State or municipal officers or agency of the Commonwealth for any purpose for which the deposit of bonds or other obligations of the Commonwealth now is or hereafter may be authorized by law.

(c) Any trust indenture, resolution or resolutions authorizing any bonds may contain provisions which shall be part of the contract with the holders thereof as to (i) pledging all or any of the revenues or receipts and contract rights of the authority; (ii) the terms and provisions of the bonds; (iii) limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, under such indenture or resolution, or of any loan or grant by the United States may be applied; (iv) limitations on the issuance of additional bonds; (v) the terms and provisions of any deed of trust or indenture securing the bonds, or under which the same maybe issued; and (vi) any other or additional agreements with the holders of the bonds.

(d) The authority may enter into any deeds of trust, indentures or other agreements with any bank or trust company, or other person or persons in the United States having power to enter into the same, including any Federal or other governmental agency, as security for such bonds, and may assign and pledge all or any of the revenues, receipts, and contract rights of the authority thereunder. Such deed of trust, indenture or other agreement may contain such provisions as may be customary in such instruments, or as the authority may authorize.

(e) Said bonds shall have all the qualities of negotiable instruments under the law merchant, and the negotiable instruments law of the Commonwealth of Pennsylvania.

Section 15. Refunding Bonds.—The authority is hereby authorized to provide, by resolution of the board, for the issuance of refunding bonds for the purpose of refunding any bonds of the authority issued under the provisions of this act and then outstanding, either by voluntary exchange with the holders of such outstanding bonds or to provide funds to redeem and retire such outstanding bonds, with accrued interest, and any premium payable thereon at maturity or at any call date. The issuance of such refunding bonds, the maturities and other details thereof, the rights of the holders thereof, and the duties of the authority in respect to the same, shall be governed by the foregoing provisions of this act in so far as the same may be applicable. Refunding bonds may be issued by the authority to refund bonds originally issued or to refund bonds of the authority previously issued for refunding purposes.

Section 16. Remedies of Bondholders.—(a) The rights and the remedies herein conferred upon, or granted to the bondholders, shall be in addition to, and not in limitation of, any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing

for the issuance of bonds, or by any deed of trust, indenture or other agreement under which the same shall be issued. In the event that the authority shall default in the payment of principal of, or interest on, any of the bonds after said principal or interest shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the authority shall fail or refuse to comply with the provisions of this act, or shall default in any agreement made with the holders of the bonds, the holders of twenty-five per cent in aggregate principal amount of the bonds then outstanding, by instrument or instruments filed in the office of the recorder of deeds of the county, and proved or acknowledged in the same manner as a deed to be recorded may (except as such right may be limited under the provisions of any deed of trust, indenture or other agreement as aforesaid), appoint a trustee to represent the bondholders for the purposes herein provided. Such trustee and any trustee under any deed of trust, indenture or other agreement may, and upon written request of the holders of twenty-five per cent (or such other percentage as may be specified in any deed of trust, indenture or other agreement aforesaid) in principal amount of the bonds then outstanding, shall, in his or its own name:

(1) By mandamus or other suit, action or proceeding at law or in equity, enforce all rights of the bondholders, including the right to require the authority to collect charges and other pledged assets adequate to carry out any agreements as to, or pledge of the revenues, receipts and contract rights of, the authority, and to require the authority to carry out any other agreements with or for the benefit of the bondholders, and to perform its and their duties under this act.

(2) Bring suit upon the bonds.

(3) By action or suit in equity, require the authority to account as if it were the trustee of an express trust for the bondholders.

(4) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders.

(5) By notice in writing to the authority, declare all bonds due and payable, and if all defaults shall be made good, then with the consent of the holders of twenty-five per cent (or such other percentage as may be specified in any deed of trust, indenture or other agreement aforesaid) of the principal amount of the bonds then outstanding, to annul such declaration and its consequences.

(b) Any trustee, whether appointed as aforesaid or acting under a deed of trust, indenture or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled, as of right, to the appointment of a receiver, who (to the same extent that the authority itself could do so) may enter and take possession of the facilities of the authority or any parts thereof, the revenues, receipts or pledges from which are, or may be, applicable to, the payment of the bonds so in default, and operate and maintain the same and collect and

receive all revenues thereafter arising therefrom in the same manner as the authority might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustee, the fees, counsel fees and expenses of the trustee, and of the receiver, if any, and all costs and disbursements allowed by the court, shall be a first charge on any revenues and receipts derived from the facilities of the authority, the revenues, receipts or pledges from which are or may be applicable to the payment of the bonds so in default. Said trustee, in addition to the foregoing, shall have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of the bondholders in the enforcement and protection of their rights.

(c) In addition to all other rights and all other remedies, any holder of bonds of the authority shall have the right by mandamus or other suit, action or proceeding at law, or in equity, to enforce his rights against the authority, including the right to require the authority to collect fees and other charges adequate to carry out any agreement as to, or pledge of, such fees or other charges or income, revenues and receipts, and to require the authority to carry out any of its covenants and agreements with the bondholders and to perform its and their duties under this act.

Section 17. Issuance of Bonds.—The bonds of the authority may be issued pursuant to one or more resolutions or one or more trust indentures and, as provided in such resolution or trust indenture, the moneys set aside in any fund or funds pledged for any particular bonds or series of bonds shall be held for the sole benefit of such bonds, separate and apart from the moneys pledged for any other bonds of the authority issued under any other resolution or trust indenture.

Section 18. Exemption from Taxation.—The effectuation of the authorized purposes of the authority created under this act in all respects shall and will be for the benefit of the people of the Commonwealth, and since the authority will be performing essential public functions in effectuating such purposes, the authority shall be exempt from payment of any taxes or assessments upon any property acquired, held, owned, leased or used by it for such purposes, and the bonds issued by the authority, their transfer and the income therefrom (including any profits made on the sale thereof) at all times shall be free from taxation, other than inheritance and estate taxation, within the Commonwealth of Pennsylvania.

Section 19. Appropriation.—The sum of two million dollars (\$2,000,000), is hereby appropriated to the Pennsylvania Minority Business Development Authority for the purposes set forth in this act.

Section 20. Effective Date.—This act shall take effect immediately.

APPROVED—The 22nd day of July, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly
No. 206.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive style with a large initial "C" and a prominent flourish at the end.

Secretary of the Commonwealth.