

ECONOMIC DEVELOPMENT FINANCING LAW
Act of Aug. 23, 1967, P.L. 251, No. 102
AN ACT

Cl. 64

Providing for the incorporation as public instrumentalities of the Commonwealth and as bodies corporate and politic of industrial and commercial development authorities for municipalities, counties and townships; prescribing the rights, powers and duties of such authorities hereafter incorporated; authorizing such authorities to acquire, by gift or purchase, to construct, improve and maintain industrial, specialized, or commercial development projects including projects for the elimination or prevention of blight and the control of air and water pollution, and to borrow money and issue bonds therefor; providing for the payment of such bonds and giving security therefor, and prescribing the rights of the holders of such bonds; authorizing the lease or sale of industrial, specialized, or commercial development projects to industrial, specialized, or commercial enterprises; authorizing any county, municipality or township to transfer or convey to such authorities, any facilities or property available for industrial, specialized, or commercial development projects; exempting the property and securities of such authorities from taxation; authorizing such authorities to enter into contracts with and to accept grants from the Federal Government or any agency thereof; and providing for approval by the Secretary of Commerce of the proceedings relating to industrial, specialized, or commercial development projects of such authorities. (Title amended Dec. 19, 1975, P.L.576, No.165)

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

Section 1. This act shall be known and may be cited as the "Economic Development Financing Law."

(1 amended Dec. 17, 1993, P.L.490, No.74)

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 and other economic activities in the Commonwealth;

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

(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 and other economic activities, including in conjunction therewith the financing of machinery and equipment and other capital needs;

(6) That 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;

(7) That additional industrial, commercial and other economic activities could be attracted to this Commonwealth if such additional means of financing were available to acquire, construct, rehabilitate and expand facilities and implement other cost-savings activities, including, but not limited to, buildings, plants, machinery and equipment and other industrial and commercial facilities;

(8) That by reason of the unavailability of private credit sources redevelopment areas in cities of this Commonwealth have remained unimproved and the residents of core areas of cities of this 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 guaranteeing the residents of this Commonwealth clean air and water and the preservation of the environment and their implementation 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 such air, water, solid or liquid waste disposal, sewage disposal and pollution control standards;

(10) That there is now, and is expected to be, a critical need for the production of water suitable for public use and consumption, natural gas, coal, oil, and other resources, and that in order to insure continuing supplies of such resources at reasonable rates, it is necessary to provide additional means of financing projects directed to such production;

(11) That 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 facilities and systems of every kind, industrial parks, energy conversion facilities, facilities for the furnishing of gas or water, communication facilities, tourism, recreational and sports facilities, convention facilities, health care facilities, education facilities, facilities and services for persons requiring special care and other basic service and related facilities and facilities conducive to economic activity within this Commonwealth;

(12) That there now is and will continue to exist a need to build, improve and finance the operations of facilities owned by municipalities, municipal authorities and other authorities and instrumentalities of the Commonwealth, including, but not limited to, publicly owned park facilities, roads and other transportation facilities and systems of every kind, correctional facilities, jails, court facilities, waste treatment and disposal facilities, firefighting facilities, library facilities and police facilities and that the cost of obtaining the financing for building and improving these public facilities may be reduced through the issuance of bonds through the Pennsylvania Economic Development Financing Authority;

(13) That the public ports of this Commonwealth are assets of value to the entire Commonwealth, and the residents of all parts of this Commonwealth benefit directly from the waterborne commerce that the ports attract and service, and any improvement to the ports that increases export and import commerce will benefit the people of the entire Commonwealth.

Therefore, it is hereby declared to be the policy of this Commonwealth to promote the health, safety, morals, employment, business opportunities, economic activity 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 and by providing for the creation of the Pennsylvania Economic Development Financing Authority which shall exist and operate as a public instrumentality of the Commonwealth.

(2 amended Dec. 17, 1993, P.L.490, No.74)

Section 2.1. Further Findings and Declaration of Policy.--It is hereby further determined and declared as a matter of legislative finding that the purposes of this act are to:

(1) Promote industrial, commercial and other economic development.

- (2) Promote public and private infrastructure.
- (3) Promote the use of the most efficient means of production and distribution of goods and services within this Commonwealth.
- (4) Protect the natural resources of this Commonwealth and encourage the reduction and recycling of wastes and the orderly recovery of natural resources.
- (5) Promote improvement in the quality of goods and services produced in this Commonwealth to insure their continued demand in the competitive global economy.
- (6) Promote the building and use of efficient means for transporting and storing goods by, among other things, developing sufficient port, rail, highway, air, intermodal shipping, warehouse and other transportation and storage facilities within this Commonwealth.
- (7) Promote the installation and use of the most efficient means of communications.
- (8) Promote a healthy environment through the abatement, safe storage, transport, elimination, remediation and disposal within this Commonwealth of pollutants and wastes of every kind and type, whether liquid, solid, gaseous, noise, thermal or otherwise and sewage.
- (9) Promote and encourage retail and wholesale establishments, whether by the promotion of such establishments themselves or through auxiliary activities such as the promotion of new or improved residential facilities or other activities deemed appropriate to eliminate blight or otherwise improve an area for industrial, commercial and other economic activity.
- (10) Promote the use of urban and commercial centers by, among other things, providing parking, convention, tourism, recreational and sports facilities.
- (11) Promote the establishment and development of health care and educational facilities and services and facilities for the care of persons requiring special care.
- (12) Promote centers for research and development and for the use and transfer of new or existing technologies.
- (13) Promote the acquisition, construction and improvement of public facilities.
- (14) Otherwise promote the health, welfare and safety of the residents of this Commonwealth by promoting economic activity and efficiency, by alleviating or eliminating unemployment, blight and other unhealthy conditions and by otherwise providing public benefit and prosperity and to do or perform any of the above regardless of whether the project, the project applicant or the project user is public or private or done with a profit or not-for-profit purpose.

(2.1 added Dec. 17, 1993, P.L.490, No.74)

Section 2.2. Construction.--This act shall be liberally construed in order to effect the legislative and public purposes of sections 2 and 2.1 of this act. The terms "finance" and "financing," as used in this act, shall be given the broadest possible interpretation and shall include, but not be limited to, refinance and refinancing.

(2.2 added Dec. 17, 1993, P.L.490, No.74)

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

"Agricultural activity" means any person, partnership, or corporation which is engaged primarily in raising, preparing, or marketing crops, livestock, or related products.

"Acquisition" means the acquisition, construction, reconstruction, equipping, expansion, extension, improvement, rehabilitation or remodeling of a project.

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

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

"Bonds" means and includes any notes, instruments, refunding notes and bonds and other evidences of indebtedness or obligations.

"Commercial facilities" means and includes, but is not limited to, wholesale, retail and other mercantile facilities, warehouse and distribution facilities, service facilities, office facilities, hotel or motel facilities, shopping centers, department stores and international, national and regional headquarters facilities, health care facilities, education facilities, facilities for persons requiring special care, research and development facilities and tourism, recreational and sports facilities.

"Commonwealth agency" means any agency, authority or other instrumentality of the Commonwealth.

"Construction" or "to construct" means and includes the equipping, erection, extension, installation, renovation, enlargement or repair of structures employed in, or related to, projects comporting with the intent of this act, and also includes activities substantially related to such equipping, erection, extension, installation, renovation, enlargement or substantial repair of structures employed in, or related to, such projects.

"Cost of the project" or "cost" means and includes any and all costs of a project, including, but not limited to, any and all costs and expenses of acquisition of all land, interests in land, property, rights, buildings, structures, equipment, furnishings and other tangible or intangible property comprising the project, the expense of demolishing, removing or relocating any buildings or structures on lands acquired or to be acquired and the expense of acquiring any lands to which such buildings or structures may be moved or relocated, financing charges and other costs of financing and issuing bonds, interest expenses prior to and during construction and for a period of twelve months thereafter, costs of engineering, financial, accounting and legal services, plans, specifications, studies, surveys necessary or incidental to determining the feasibility or practicability of constructing the project, administrative expenses, reserves for interest and such other expenses as may be necessary or incidental to the development, implementation or use of the project and the placing of the same in operation. In addition, "cost of the project" or "cost" may include working capital or other capital needs related to industrial, commercial or other economic activities or operating costs of public facilities, provided, however, that working capital, operating costs and other capital needs shall be limited as a percentage of the cost of the project financed with the proceeds of bonds issued under this act by regulations, statements of policy, guidelines or rulings issued by the Department of Commerce.

"Department" means the Department of Commerce of the Commonwealth.

"Disaster relief project" means any undertaking to rehabilitate, repair, reconstruct, clean up, replace or otherwise return to economic use any land, site, structure, or facility, including machinery, equipment and tools damaged or lost due to disaster of flood or fire or other casualty. In order to qualify as a disaster relief project, a project must

be located within a county designated as a disaster area by the President of the United States.

"Energy conversion facilities" means an improvement to industrial, commercial or other facilities which change their fuel consumption capability to a fuel determined by an authority or the financing authority to be more desirable than the fuel used by the occupant of the project at the time application is made to the authority.

"Energy producing facilities" means and includes facilities to create, extract, transmit, or store energy or energy producing substances, including, but not limited to coal mine operations, oil and gas operations, solar, nuclear, hydro or geothermal energy operations, except the production of electrical energy by a utility entity.

"Federal agency" or "Federal Government" 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.

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

"Financing board" means the governing body of the financing authority.

"Governmental body" or "governmental bodies" means the body or board authorized by law to enact ordinances or adopt resolutions for the particular municipality.

"Industrial development agency" means those nonprofit corporations or foundations or associations which have been certified as industrial development agencies by the Pennsylvania Industrial Development Authority Board pursuant to the act of May 17, 1956 (1955 P.L.1609, No.537), known as the "Pennsylvania Industrial Development Authority Act."

"Industrial facilities" means and includes any property, real or personal, which is used for manufacturing, warehousing, transportation of goods for manufacturing or sale, offices, research and development and other facilities of trades or services which perform activities ancillary to industrial activity.

"Interagency project" means any project which meets the definition of "project" under the provisions of the act of March 1, 1988 (P.L.82, No.16), known as the "Pennsylvania Infrastructure Investment Authority Act," as now or may hereafter be amended, which has been referred to the financing authority in accordance with section 6.3(a) of this act.

"Municipal authority" means an authority organized and existing under the act of May 2, 1945 (P.L.382, No.164), known as the "Municipality Authorities Act of 1945," as now or may hereafter be amended.

"Municipality" means any county, city, town, borough or township of the Commonwealth of Pennsylvania, each of which political subdivisions are separate incorporated municipalities of the Commonwealth of Pennsylvania for the purposes of this act.

"Pollution control facilities" means and includes any property, real or personal, which is to be used to abate, reduce, remediate or aid in the prevention, control, collection, treatment, disposal or monitoring of noise, air, water or thermal pollution, solid or liquid 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, Commonwealth or local agency having jurisdiction.

"Project" means industrial facilities, commercial facilities, pollution control facilities, energy conversion facilities, energy producing facilities, disaster relief project facilities, public facilities and other facilities or activities which promote any of the public purposes set forth in section 2 or 2.1 of this act, including any land, interests in land, easements, appurtenances, improvements, buildings, structures, equipment, furnishings or other real or personal property, whether tangible or intangible, or interest therein or any combination thereof. In addition, the project may include working capital and other capital needs for industrial, commercial and other economic or cost-savings activities and may consist solely of the financing of operating expenses. The financing of projects may be with tax-exempt bonds or taxable bonds issued pursuant to this act and may be direct through application of bond proceeds or other funds to pay project costs or indirect through stock purchases or such other means as an authority or the financing authority may approve.

"Project applicant" means any individual, public or private corporation, partnership, association, firm or other entity, whether or not created for the purpose of making a profit, or any Commonwealth agency or any municipality or any municipal authority which requests an authority or the financing authority to participate in the financing of one or more projects in the manner provided by this act for use by one or more project users.

"Project user" means any individual, public or private corporation, partnership, association, firm, municipality, municipal authority, Commonwealth agency or other entity, whether or not created for the purpose of making a profit, which owns, leases or uses all or any part of a project and may include a project applicant.

"Public facility" means any facility owned or leased by a municipality, municipal authority or Commonwealth agency which serves a public purpose, including, but not limited to, park facilities, water and sewer facilities, waste treatment facilities, waste disposal facilities, roads and transportation facilities and systems of every kind, public parking facilities, correctional facilities, jails and court facilities, police and firefighting facilities, library facilities, child care facilities, educational facilities and health care facilities.

"Secretary" means the Secretary of Commerce of the Commonwealth.

"Taxable bonds" means bonds or other evidences of indebtedness the interest on which is includable in gross income for Federal income taxation purposes.

"Tax-exempt bonds" means bonds or other evidences of indebtedness the interest on which is excludable from gross income for Federal income taxation purposes.

"Utility entity" means any public or private company, corporation or other entity engaged primarily in an activity regulated by the Pennsylvania Public Utility Commission.

(3 amended Dec. 17, 1993, P.L.490, No.74)

Compiler's Note: The Department of Commerce, referred to in this section, was renamed the Department of Community and Economic Development by Act 58 of 1996. The Secretary of Commerce, referred to in the def. of "secretary," was

renamed the Secretary of Community and Economic Development by Act 58 of 1996.

Section 4. Method of Incorporation; Applicable Elected Representative.--(a) Whenever the governmental body of any municipality shall desire to organize an authority under this act, it shall adopt a resolution or ordinance signifying its intention to do so.

Thereafter, the governmental body of such municipality shall cause a notice of such resolution or ordinance to be published at least one time in the legal periodical of the county in which such authority is to be organized, and at least one time in a newspaper, published and of general circulation, in such county. Said notice shall contain a brief statement of the substance of said resolution or ordinance, including the substance of articles of incorporation making reference to this act, and shall state that on a day certain, not less than three days after publication of said notice, articles of incorporation of the proposed authority will be filed with the Secretary of the Commonwealth of Pennsylvania. The publication of such notice as aforesaid shall be the only publication required, any law to the contrary notwithstanding.

(b) On or before the day specified in said notice the governmental body shall file with the Secretary of the Commonwealth articles of incorporation together with proof of publication of the notice as aforesaid. Said articles of incorporation shall set forth:

(1) The name of the authority;

(2) A statement that such authority is formed under this act;

(3) The name of the incorporating municipality, together with the names and addresses of the members of its governmental body;

(4) The names, addresses and term of office of the first members of the board of said authority; and

(5) The term of existence of the authority which shall not exceed fifty years; all of which matters shall be determined in accordance with the provisions of this act. Said articles of incorporation shall be executed by the governmental body by its proper officers and under its municipal seal.

(c) The Secretary of the Commonwealth shall forthwith, but not prior to the day specified in the aforesaid notice, and when all proper fees and charges have been paid, file the articles and issue a certificate of incorporation, a copy of which shall be delivered to the secretary. Upon the issuance of such certificate of incorporation by the Secretary of the Commonwealth, the corporate existence of said authority shall begin. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been incorporated.

(d) Each of the following elected officials of each of the following respective political subdivisions within the Commonwealth is hereby designated and empowered to approve the issuance of bonds to finance the cost of projects within or without each such political subdivision and to approve the acquisition of projects within each such political subdivision:

(1) With respect to any county of any class, the applicable elected representative shall be any county commissioner designated for such purpose by the county commissioners of such county;

(2) With respect to any city of any class, the applicable elected representative shall be the mayor of such city or any council member designated by the mayor for such purpose;

(3) With respect to any township of the first class, the applicable elected representative shall be any township commissioner designated for such purpose by the township commissioners of such township;

(4) With respect to any township of the second class, the applicable elected representative shall be any township supervisor designated for such purpose by the township supervisors of such township;

(5) With respect to any borough, the applicable elected representative shall be the president of borough council or any council member designated by the president for such purpose;

(6) With respect to any political subdivision which has adopted a charter under the act of April 13, 1972 (P.L.184, No.62), known as the "Home Rule Charter and Optional Plans Law," the applicable representative designated and empowered to grant the approvals contemplated hereunder shall be the chief elected executive officer designated by the charter of such political subdivision, or, if there is no provision for such executive officer thereunder, the applicable representative shall be any member of the legislative body of such political subdivision designated by such body.

((d) amended Dec. 17, 1993, P.L.490, No.74)

(4 amended Dec. 16, 1982, P.L.1363, No.312)

Section 5. Amendment of Articles.--(a) An authority, in the manner hereinafter provided, may, from time to time, amend its articles:

(1) To adopt a new name;

(2) To add a provision therein increasing its term of existence to a date not exceeding fifty years from the date of approval of the articles of amendment or to modify any provision thereof limiting its term of existence by increasing such term to such a date;

(3) To increase or decrease the number of members of the board of the authority and to revise the terms of office of such members, all in such manner as shall not be inconsistent with the provisions of section 9 of this act.

(b) Every amendment to the articles shall first be proposed by the board by the adoption of a resolution setting forth the proposed amendment and directing that it be submitted to the governmental body of the municipality which created the authority. The resolution shall contain the language of the proposed amendment to the articles by providing that the articles shall be amended so as to read as therein set forth in full, or that any provision thereof be amended so as to read as therein set forth in full, or that the matter stated in the resolution be added to or stricken from the articles. After the amendments have been submitted to the governmental body it shall adopt or reject such amendment by resolution or ordinance.

(c) After an amendment has been adopted by the governmental body, articles of amendment shall be executed by the governmental body by its proper officers and under its municipal seal and shall set forth:

(1) The name and location of the registered office of the authority;

(2) A statement that the authority was formed pursuant to this act and the date of the issuance of its certificate of incorporation;

(3) The resolution or ordinance of the governmental body adopting the amendment;

(4) The amendment adopted by the governmental body which shall be set forth in full.

(d) The governmental body shall advertise its intention to file articles of amendment with the Secretary of the Commonwealth in the manner prescribed in section 4 of this act in the case of the formation of an authority. Advertisements shall appear at least three days prior to the day upon which the articles of amendment are presented to the Secretary of the Commonwealth and shall set forth briefly:

(1) The name and location of the registered office of the authority;

(2) A statement that the articles of amendment are to be filed under the provisions of this act;

(3) The nature and character of the proposed amendment;

(4) The time when the articles of amendment will be filed with the Secretary of the Commonwealth.

(e) The articles of amendment and proof of the advertisement shall be filed by the governmental body with the Secretary of the Commonwealth. The Secretary of the Commonwealth shall on the day specified in the advertisement, when all fees and charges have been paid, file the articles and issue to the municipality a certificate of amendment. A copy of such certificate of amendment shall be delivered to the secretary.

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

(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:

(1) To have existence for a term of fifty years and for such further period or periods as may be provided in articles of amendment approved under subsection (e) of section 5.

(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 acquire, purchase, own, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein necessary or convenient for carrying out the purposes of the authority, and to sell, option, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it.

(5) To acquire by gift, purchase, lease or otherwise, and to construct, improve, maintain and repair projects.

(6) To make bylaws for the management and regulation of its affairs.

(7) To appoint officers, agents and employes, to prescribe their duties and to fix their compensation.

(8) To enter into agreements providing for (i) the acquisition of projects by either the authority, the project applicant or the project user; (ii) the financing of projects where acquisition is by a project applicant or a project user; (iii) the financing of improvements to existing projects; and

(iv) the leasing or sale of projects to or the loan financing of projects for the project users or project applicants as provided in this act.

(9) To enter into agreements of lease, sale or loan financing with project users or project applicants providing, inter alia, (i) for the leasing or sale of projects to, or the loan financing of projects for, the project users or project applicants for a term of years not to extend beyond the term of existence of authority; (ii) for a rental, purchase price, loan or other payments sufficient to amortize the principal, interest and premium, if any, of all bonds and other obligations of the authority incurred to provide funds to pay the costs of the project to be leased, sold or otherwise financed; (iii) for the project user or project applicant to pay to the authority or to otherwise assume and pay all other costs of acquiring, constructing, maintaining and operating the project; (iv) provisions, if deemed desirable, that the project user or project applicant of a project pursuant to a lease shall have the options to renew such lease or to purchase any or all of such project; (v) for conveyance with or without consideration of any part or all of a project to the project user or project applicant on or before payment of all bonds and other obligations of the authority incurred with respect to such project; and (vi) such other provisions as are customary in such leases, agreements of sale or loan agreements or as may be deemed necessary or convenient by the authority.

(10) To borrow money, make and issue bonds of the authority, Provided, That no bonds shall have a maturity date later than the life of the authority, and to secure the payment of such bonds or any part thereof by pledge, mortgage or deed of trust of all or any part of its property and of its revenues and receipts, 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 by mortgage, pledge or otherwise and for the rights of the holders thereof.

(11) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.

(12) Without limitation of the foregoing, to borrow money and accept grants and other funds from and to enter into contracts, leases or other transactions with any Federal agency, the Commonwealth of Pennsylvania or its agencies or instrumentalities, or with any municipality, school district, bank or other financial institution, corporation or other authority.

(13) To pledge, mortgage, hypothecate or otherwise encumber all or any part of the property, real or personal, including but not limited to the revenues or receipts of the authority as security for all or any of the obligations of the authority.

(14) To make loans to project applicants or project users and to provide or issue alternative types of financing, including, but not limited to, standby loan commitments, guarantees, letters of credit and grants.

(15) To do all acts and things necessary or convenient for the promotion of its business and the general welfare of the authority, to carry out and exercise the purpose of and the powers granted by this act or any other acts.

(c) An authority created hereunder shall have no power at any time or in any manner to pledge the general credit or taxing power of the Commonwealth nor shall any authority created

hereunder have the power at any time to pledge the general credit or taxing power of any political subdivision except, however, to the extent a project applicant pledges any such credit or taxing power to an authority with respect to a public project, and the obligations of the authority shall be limited as provided in section 7(a) hereof. The bonds of the authority shall on the face thereof clearly set forth the foregoing limitation.

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

(1) Acquire or finance the acquisition of a project which shall cause the removal of a plant, facility or other business from one area of this Commonwealth to another area of this Commonwealth, unless the secretary has found that relocation of the plant, facility or other business is necessary in order for the plant, facility or other business to remain competitive or to prevent the plant, facility or other business from leaving this Commonwealth.

(2) Enter into any agreement to finance the acquisition of a project in excess of the cost of the project.

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

(4) Finance any project which will be used in whole or in part for illegal activities.

(5) Finance any project which is not located within this Commonwealth.

(6 amended Dec. 17, 1993, P.L.490, No.74)

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

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

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

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

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

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

(5) The Secretary of Agriculture or his designee.

(6) The Secretary of Banking or his designee.

(7) One member to be appointed by the Majority Leader of the Senate, one member to be appointed by the Minority Leader of the Senate, one member to be appointed by the Majority Leader of the House of Representatives and one member to be appointed by the Minority Leader of the House of Representatives. All members shall serve at the pleasure of the appointing authority.

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

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

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

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

(6.1 amended Dec. 17, 1993, P.L.490, No.74)

Compiler's Note: Section 1101 of Act 58 of 1996, which created the Department of Community and Economic Development and abolished the Department of Community Affairs, provided that, in place of the membership of the Secretary of Community Affairs on the board of the Pennsylvania Economic Development Financing Authority under subsection (b)(4), the Governor shall make an additional appointment under subsection (b)(1).

The Secretary of Commerce, referred to in subsec.

(b), was renamed the Secretary of Community and Economic Development by Act 58 of 1996. The Secretary of Community Affairs, referred to in subsec. (b), was abolished by Act 58 of 1996 and the functions were transferred to the Secretary of Community and Economic Development.

Section 6.2. Powers of the Financing Authority;

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

(1) To have existence until its existence shall be terminated by law.

(2) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(3) To adopt, use and alter at will a corporate seal.

(4) To make bylaws for the management and regulations of its internal affairs, and, subject to agreements with holders of its bonds, to make rules and regulations with respect to its operations, properties and facilities.

(5) To appoint an executive director and any other officers, agents, and employes as it may require for the performance of its duties, and to prescribe their duties, fix their compensation, promote and discharge them within the limitations provided by law.

(6) To enter into financing agreements with project applicants and project users providing, among other things: (i) for loan, lease or sale financing or other financing of projects for project applicants or project users; (ii) for loan, rental

or purchase price payments or other payments sufficient to amortize the principal, interest and premium, if any, of all bonds and other obligations of the financing authority incurred to provide funds to pay the costs of the projects to be financed; (iii) for the project applicants or project users to pay or cause to be paid all other costs of acquiring, constructing, maintaining and operating the projects; (iv) for conveyance with or without consideration of any part or all of a project to the project user or project applicant on or before payment of all bonds and other obligations of the financing authority incurred with respect to such project; and (v) for such other matters as are customary in such agreements or as may be deemed necessary or appropriate by the financing authority; and to make contracts of every name and nature, and to execute all instruments necessary or convenient for the carrying on of its business.

(7) To borrow money and issue bonds and other evidences of indebtedness created thereby, to secure the payment of such bonds or other evidences of the indebtedness or any part thereof by pledge, mortgage or assignment of all or any part of the property of the financing authority, its revenues and receipts therefrom or its revenues generally, and to provide for the rights of the lenders and holders thereof in accordance with the provisions of this act.

(8) To acquire and sell loans, mortgages and security interests at public or private sale, to negotiate modifications or alterations in mortgages and security interests, to foreclose on any mortgage or security interest in default or commence any action to protect or enforce any right conferred upon it by any law, mortgage, security agreement, contract or other agreement, to bid for and purchase property which was the subject of such mortgage or security interest at any foreclosure or at any other sale, to acquire or take possession of any such property, and to exercise any and all rights as provided by law for the benefit or protection of the financing authority or mortgage or security interest holders.

(9) To collect fees and charges in connection with its loan commitments and servicing, including, but not limited to, reimbursement of costs of financing as the financing authority shall determine to be reasonable and as shall be approved by the financing authority.

(10) To make and execute contracts for the servicing of loans and mortgages acquired by the financing authority pursuant to this act, and to pay the reasonable value of services rendered to the financing authority pursuant to those contracts.

(11) To accept gifts, grants, loans and other aid from the Federal Government, the Commonwealth or any political subdivision of the Commonwealth, or any person or corporation, foundation or legal entity, and to agree to and comply with any conditions attached to Federal and Commonwealth financial assistance not inconsistent with the provisions of this act.

(12) To invest moneys of the financing authority not required for immediate use, including proceeds from the sale of any bonds, in such manner as the financing board shall determine, subject to any agreement with bondholders stated in the authorizing resolution providing for the issuance of bonds.

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

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

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

(16) To contract for the services of attorneys, accountants and financial experts and any other advisors, consultants and agents as may be necessary in its judgment, subject to the requirement that the chairman shall ensure that minority-owned or minority-controlled firms shall have an opportunity to participate to a significant degree in the provision of any contractual services purchased by the authority.

(17) To make loans to project applicants and project users and to provide or issue alternative types of financing, including, but not limited to, standby loan commitments, guarantees and letters of credit.

(18) To enter into agreements providing for the acquisition of projects comprising or including public facilities for financing purposes only.

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

(20) To finance all or part of an interagency project which meets the requirements of section 6.3(a) of this act.

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

(6.2 amended Dec. 17, 1993, P.L.490, No.74)

Section 6.3. Financing Authority Indebtedness.--(a) The financing authority shall have the power and is hereby authorized to issue its limited obligation revenue bonds and other types of financing as in the judgment of the financing authority shall be necessary to provide sufficient funds for any related or unrelated projects: (i) provided that the issuance by the financing authority of taxable or tax-exempt bonds on behalf of projects comprising industrial facilities, commercial facilities, pollution control facilities, energy conversion facilities, energy producing facilities and disaster relief project facilities shall have been authorized by an industrial and commercial development authority or a group of industrial and commercial development authorities or by an industrial development agency or a group of industrial and development agencies; (ii) further provided that the financing authority may issue taxable or tax-exempt bonds on behalf of interagency projects only if the applicant has first applied to the Pennsylvania Infrastructure Investment Authority for financing under the provisions of the act of March 1, 1988 (P.L.82, No.16), known as the "Pennsylvania Infrastructure Investment Authority Act," and the Pennsylvania Infrastructure Investment Authority in writing refers the applicant to the financing authority to finance all or part of the interagency project in accordance with this act; and (iii) further provided that the issuance by the financing authority of taxable or tax-exempt bonds for a public facility other than interagency projects and projects for roads and transportation facilities and transportation systems of every kind shall have been authorized by a municipality, municipal authority or Commonwealth agency and only if both the applicant and the financing authority have determined that the cost of obtaining the financing for the public facility will be reduced through the issuance of bonds through the financing authority. For purposes of the determination required in this subsection, any

financing for a public facility that the financing authority reasonably believes could have received a rating of "A" or better from either Moody's Investors Service or Standard & Poor's Corporation shall be presumed not to be eligible for financing by the financing authority. The financing authority is authorized and empowered to use the proceeds of any bonds issued for the making of loans, purchasing loans, mortgages, security interests or loan participations and paying all incidental expenses in connection therewith, paying expenses of authorizing and issuing the bonds, paying interest on the bonds until revenues thereof are available in sufficient amounts and funding the reserves as the financing authority deems necessary and desirable.

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

(c) Bonds issued under this section shall not be a debt or liability of the Commonwealth and shall not create or constitute any indebtedness, liability or obligation of the Commonwealth. All bonds shall be payable solely from revenues or funds pledged or available for their repayment as authorized in this act, including the proceeds of any issue of bonds and, in the case of a public project, the pledge of fees, taxes and other revenues by a political subdivision or other instrumentality of the Commonwealth. Each bond shall contain on its face a statement to the effect that the financing authority is obligated to pay the principal thereof or the interest thereon only from its revenues, receipts or funds pledged or available for their payment as authorized in this act, and that neither the Commonwealth nor any political subdivisions are obligated to pay the principal or interest, and that neither the faith and credit nor the taxing power of the Commonwealth nor any political subdivision is pledged to the payment of the principal of or the interest on the bonds.

(d) If the bonds issued by the financing authority are tax-exempt bonds for which Federal law requires an allocation, the Department of Commerce shall issue an allocation charging such small issue project's pro rata share of the issue to the county in which said project is to be located provided that the project requires a type of allocation distributed by the department to the counties.

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

(f) Neither the members of the board of the financing authority nor any person executing the bonds shall be liable

personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

(g) (1) Bonds issued in accordance herewith shall be authorized by resolution of the financing authority. The bonds shall be of such series, bear any date or dates, mature at such time or times, bear interest at any rate or rates or at variable rates, be of any denomination or denominations, be in any form, either coupon or registered, carry any conversion or registration privileges, have any rank or priority, be executed in any manner, be payable from such sources in any medium of payment at any place or places and at any time or times within or without this Commonwealth and be subject to any terms of redemption, purchase or tender by the financing authority or the holders thereof, with or without premium, as the resolution or resolutions may provide.

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

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

(4) Bonds may be sold at public or private sales for such price or prices as the financing authority shall determine, subject to the requirement that the chairman shall ensure that minority-owned or minority-controlled firms shall have an opportunity to participate to a significant degree in any bond sale activities. Pending the preparation of the definitive bonds, interim receipts may be issued to the purchaser or purchasers thereof and may contain such terms and conditions as the financing authority may determine.

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

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

(1) Secure the bonds.

(2) Make covenants against pledging all or part of its revenues or receipts to other parties.

(3) Make covenants limiting its right to sell, pledge or otherwise dispose of notes and bonds of governmental units, loan agreements of public or private persons or entities or other property of any kind.

(4) Make covenants as to additional bonds to be issued, the limitations thereon, the terms and conditions thereof, and the custody, application, investment and disposition of the proceeds thereof.

(5) Make covenants as to the incurring of other debts by it.

(6) Make covenants as to the payment of principal of or interest on bonds, the sources and methods of the payment, the rank or priority of bonds with respect to liens or security interests or the acceleration of maturity of bonds.

(7) Provide for replacement of lost, stolen, destroyed or mutilated bonds.

(8) Make covenants as to the redemption, purchase or tender of bonds by the financing authority or the holders thereof and the privileges of exchanging them for other bonds.

(9) Make covenants to create or authorize the creation of special funds or accounts to be held in trust or otherwise for the benefit of holders of bonds, or of reserves for other purposes and as to the use, investment and disposition of moneys held in those funds, accounts or reserves.

(10) Provide for the rights, liabilities, powers and duties arising upon the breach of a covenant, condition or obligation, and prescribe the events of default and the terms and conditions upon which any or all of the bonds shall become or may be declared due and payable before maturity and the terms and conditions upon which the declaration and its consequences may be waived.

(11) Vest in a trustee or trustees within or without this Commonwealth in trust any property, rights, powers and duties as the financing authority may determine. These may include any or all of the rights, powers and duties of any trustee appointed by the holders of bonds or notes, including rights with respect to the sale or other disposition of notes and bonds of governmental units and other instruments and security pledged pursuant to a resolution or trust indenture for the benefit of the holders of bonds and the right by suit or action to foreclose any mortgage pledged pursuant to the resolution or trust indenture for the benefit of the holders of the bonds, notes or other obligations, and to limit the right of the holders of any bonds to appoint a trustee under this act, and to limit the rights, powers and duties of the trustee.

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

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

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

(i) A pledge of revenues, receipts, moneys, funds or other property or instruments made by the financing authority shall be valid and binding from the time when the pledge is made. The revenues, receipts, moneys, funds or other property pledged and thereafter received by the financing authority shall be immediately subject to the lien of the pledge without its physical delivery or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the financing authority irrespective of whether the parties have notice of the lien. No instrument by which a pledge under this section is created, evidenced or noticed need be filed or recorded except in the records of the financing authority.

(j) Whether or not the bonds are of a form and character as to be negotiable instruments under the terms of Title 13 of the Pennsylvania Consolidated Statutes (relating to commercial code), the bonds are made negotiable instruments within the

meaning of and for the purposes of Title 13, subject only to the provisions of the bonds for registration.

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

(6.3 amended Dec. 17, 1993, P.L.490, No.74)

Compiler's Note: The Department of Commerce, referred to in subsec. (d), was renamed the Department of Community and Economic Development by Act 58 of 1996.

Section 6.4. Financing Authority Loans.--(a) The financing authority shall ascertain to its satisfaction that:

(1) Firm commitments satisfactory to the financing authority have been obtained from responsible financial sources, which may include a Federal agency, project applicant or the project user, for the portion of project costs in excess of any loan requested from the financing authority.

(2) A firm commitment satisfactory to the financing authority from the project applicant or project user has been obtained to lease or use the project after acquisition is completed.

(3) The project user may reasonably be expected to comply with the terms of such lease or use.

(4) The project complies with all rules and regulations of the financing authority, if any.

(b) In addition to other provisions of this section limiting the power of the financing authority to make loans in respect to a particular project, no funds of the financing authority shall be used in respect of any project if the financing authority would be required to operate, service or maintain the project pursuant to any lease or other agreement except upon foreclosure or except upon the occurrence of a default in the payment or terms of any loan made. Nothing shall prevent the financing authority from transferring such property to the project applicant, project user or either of their designees at the end of the term of such financing.

(6.4 amended Dec. 17, 1993, P.L.490, No.74)

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

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

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

(3) The provisions of the act of December 20, 1985 (P.L.483, No.113), known as the "Tax-Exempt Bond Allocation Act," shall not apply to restrict the powers of the financing authority under section 6.2 of this act or the powers of any local

industrial and commercial development authority under this act with respect to any project being financed out of the proceeds of obligations which are not exempt from Federal income taxation.

(6.5 amended Dec. 17, 1993, P.L.490, No.74)

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

(6.6 added July 10, 1987, P.L.273, No.48)

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

(6.7 added July 10, 1987, P.L.273, No.48)

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

(6.8 added July 10, 1987, P.L.273, No.48)

Section 7. Purposes and Powers; Bonds.--(a) An authority shall have the power to issue bonds for any of its corporate purposes, provided, however, the principal, interest and other charges thereon are payable solely and exclusively (i) from revenues received from the project applicant or project user or from the income, revenues and property of the project financed, in whole or in part, with the proceeds of such bonds; (ii) from the income and revenues of certain designated projects whether or not they were financed, in whole or in part, with the proceeds of such bonds; or (iii) from its revenues generally.

(b) The bonds of any authority shall be authorized by resolution of the board thereof, shall be of such series, bear such date or dates, mature at such time or times, bear interest

at such rate or rates, be in such denominations, be in such form, either coupon or fully registered without coupons, carry such registration, exchangeability and interchangeability privileges, be payable in any medium of payment and at such place or places and at such time or times, be subject to such terms of redemption, with or without premium, and be entitled to such priorities in the revenues or receipts of such authority as such resolution or resolutions may provide. The bonds shall be signed by or shall bear the facsimile signature of such officers 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 coupon, shall have ceased to be such officer or officers at the time when such bonds shall actually be delivered. Said bonds may be sold at public or private sale for such price or prices as the authority shall determine. 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. Any bond reciting in substance that it has been issued by an authority to aid in the financing of a project to accomplish the public purposes of this act shall be conclusively deemed in proceedings involving the validity or enforceability of such bond or security therefor, to have been issued for such purpose.

(c) Any resolution or resolutions authorizing any bonds may contain provisions which shall be part of the contract with the holders thereof, as to (i) pledging the full faith and credit of the authority (but not of the Commonwealth of Pennsylvania or any political subdivision thereof) for such obligations, or restricting the same to all or any of the assets or to all or any of the revenues or receipts of the authority from all or any projects or properties; (ii) the acquisition of the project and the duties of the authority and the project applicant or project user with reference thereto; (iii) the terms and provisions of the bonds; (iv) limitations on the purposes to which the proceeds of the bonds then or thereafter to be issued, or of any loan or grant by a Federal agency may be applied; (v) the rentals and other charges for use or sale of, or loan payments for the financing of, the project; (vi) the setting aside of reserves or sinking funds and the regulation and disposition thereof; (vii) limitations on the issuance of additional bonds; (viii) the terms and provisions of any deed of trust, mortgage or indenture securing the bonds, or under which the same may be issued, and (ix) any other or additional agreements with the holders of the bonds.

(d) Any authority may enter into any deeds of trust, indentures, mortgages, or other agreements, with any bank or trust company, including any Federal agency, as security for such bonds, and may assign and pledge the assets or all or any of the revenues or receipts of the authority thereunder. Such deed of trust, indenture, mortgage or other agreement, may contain such provisions as may be customary in such instruments, or as the authority may authorize, including (but without limitation) provisions as to (i) the acquisition of any project and the duties of the authority and the project applicant or project user with reference thereto; (ii) the application of funds and the safeguarding of funds on hand or on deposit; and (iii) the rights and remedies of the trustee and the holders

of the bonds, (which may include restrictions upon the individual right of action or such bondholders); and (iv) the terms and provisions of the bonds or the resolutions authorizing the issuance of the same. No bonds shall be issued and sold until the secretary shall have first determined, based on the application material submitted, that the project and the financing thereof are in apparent conformity with this act and any regulations, statements of policy, guidelines or rulings promulgated pursuant to this act. If the project and financing thereof are found to be in conformity with this act and any regulations, statements of policy, guidelines and rulings promulgated thereunder, then the secretary shall, within twenty days after receipt thereof, approve the same and certify his approval to the authority. The decision of the secretary shall be final.

(e) A pledge of revenues, receipts, moneys, funds or other property or instruments made by an authority shall be valid and binding from the time when the pledge is made. The revenues, receipts, moneys, funds or other property pledged and thereafter received by an authority shall be immediately subject to the lien of the pledge without the physical delivery of the revenues, receipts, moneys, funds or other property or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether the parties have notice of the lien. No instrument by which a pledge under this section is created, evidenced or noticed need be filed or recorded except in the records of the authority.

(f) Whether or not the bonds are of a form and character as to be negotiable instruments under the terms of 13 Pa.C.S. (relating to commercial code), the bonds are made negotiable instruments within the meaning of and for the purposes of 13 Pa.C.S., subject only to the provisions of the bonds for registration.

(g) The secretary is authorized to issue rulings pertaining to the interpretation of the provisions of this act, which rulings may be relied upon by an authority or the financing authority. All rulings issued by the secretary shall be published in the Pennsylvania Bulletin. The secretary may promulgate such regulations as he may deem necessary to carry out the purposes of this act.

(7 amended Dec. 17, 1993, P.L.490, No.74)

Section 8. 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, mortgage or other agreement under which the same may be issued. In the event that the authority shall default in the payment of principal of, or interest on, any of the bonds after the 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 percent 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 appoint a trustee to represent the bondholders for the purpose herein provided.

(b) 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 percent (or such other percentage as may be specified in any deed of trust, indenture, mortgage 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 rentals and other charges, in respect of any agreement as to or pledge of the revenues or receipts 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 percent (or such other percentage as may be specified in any deed of trust, mortgage, indenture or other agreement aforesaid) of the principal amount of the bonds then outstanding, to annul such declaration and its consequences.

(c) The court of common pleas of the county shall have jurisdiction of any suit, action or proceedings, by the trustee on behalf of the bondholders. Any trustee appointed by a court, or a trustee 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 appointment of a receiver, who may enter and take possession of the facilities of the authority or any part or parts thereof, the revenues or receipts 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 rentals and other revenues thereafter arising therefrom in the same manner as the authority or the board 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 a trustee, the fees, counsel fees and expenses of such 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 or receipts from which are or may be applicable to the payment of the bonds so in default. A trustee shall, in addition to the foregoing, have and possess all of the powers, necessary or appropriate for the exercise of any functions specifically set forth herein or in any deed of trust, mortgage, indenture or other agreement or incident to the general representation of the bondholders in the enforcement and protection of their rights.

Section 9. Governing Body.--(a) The powers of each authority shall be exercised by a board composed as follows: the board shall consist of such number of members not less than five as shall be set forth in the articles of incorporation or amendment thereto. Except in cities operating under a duly adopted charter, the governmental body of such municipality shall appoint the members of the board, whose terms of office shall

commence on the date of appointment. One member shall serve for one year, one for two years, one for three years, one for four years and one for five years from the January first next succeeding the date of incorporation or amendment, and if there are more than five members of the board, their terms shall be staggered in a similar manner for terms of from one to five years from the January first next succeeding. Thereafter, whenever a vacancy has occurred or is about to occur by reason of the expiration of the term of any member, the said governmental body shall appoint a member of the board, except in cities operating under a duly adopted charter, for a term of five years from the date of expiration of the prior term to succeed the member whose term has expired or is about to expire. In cities operating under a duly adopted charter the members of the board shall be appointed and the members shall hold office in accordance with the provision of said charter.

(b) Members shall hold office until their successors have been appointed, and may succeed themselves. Members of the board of any authority organized or created pursuant to this act shall receive no compensation for their services, but shall be reimbursed for necessary traveling and other expenses incurred in the performance of their duties. Except in cities operating under a duly adopted charter where removal shall be in accordance with the said charter, a member may be removed with or without cause by the governmental body or by the appointing authority. If a vacancy shall occur by reason of the death, disqualification, resignation or removal of a member, a successor shall be appointed to fill his unexpired term in the manner provided in section 9 (a).

(c) A majority of the members shall constitute a quorum of the board for the purpose of organizing the authority and conducting the business thereof and for all other purposes, and all action may be taken by a vote of a majority of the members present, unless in any case the bylaws shall require a larger number. The board shall have full authority to manage the properties and business of the authority and to prescribe, amend and repeal bylaws, 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 board shall fix and determine the number of officers, agents and employes of the authority and their respective powers, duties and compensation and may appoint to such office or offices any member of the board with such powers, duties and compensation as the board may deem proper. The treasurer of an authority shall give bond in such sum as shall be approved by the board, the premium for which shall be paid by the authority.

Section 10. Moneys of The Authority.--All moneys of any authority, from whatever source derived, shall be paid to the treasurer of the authority. Said moneys shall be deposited in banks, bank and trust companies or under savings contracts in savings associations, in one or more special accounts. Such special accounts to the extent the same is not insured shall be continuously secured by a pledge of direct obligations of the United States of America, of the Commonwealth or as otherwise provided by law 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, bank and trust companies and savings associations are authorized to give such security for such deposits. The moneys in said accounts shall be paid out on the warrant or other order of the chairman

of the authority, or of such other person or persons as the authority may authorize to execute such warrants or orders. Every authority shall file an annual report with the Department of Commerce and with the municipality creating the authority on forms prepared and distributed by the Department of Commerce, which shall make provision for the accounting of revenues and expenses. Every authority shall have its books, accounts and records audited annually in accordance with generally accepted auditing standards by an independent auditor who shall be a certified public accountant or competent public accountant and a copy of his audit report shall be attached to and be made a part of the aforesaid annual report. A concise financial statement shall be published annually, at least once in a newspaper of general circulation in the municipality where the principal office of the authority is located. If such publication is not made by the authority, the municipality shall publish such statement at the expense of the authority. If the authority fails to make such an audit, then the controller, auditors or accountant designated by the municipality, are hereby authorized and empowered from time to time to examine at the expense of the authority the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other matters relating to its finances, operations and affairs.

The Auditor General of the Commonwealth of Pennsylvania shall have the right to examine the books, accounts and records of any authority.

(10 amended July 16, 1975, P.L.60, No.36)

Compiler's Note: The Department of Commerce, referred to in this section, was renamed the Department of Community and Economic Development by Act 58 of 1996.

Section 11. Transfer of Existing Facilities to Authority.--Any municipality may, and it is hereby authorized to sell, lease, grant, convey and transfer to any authority, any facilities, or any interest in real or personal property available for projects. This section without reference to any other law, shall be deemed complete, the provisions of other laws to the contrary notwithstanding.

(11 amended Dec. 17, 1993, P.L.490, No.74)

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 the base amount and subsequent adjustments established pursuant to 53 Pa.C.S. § 5614(a)(1), (b) and (c.1) (relating to competition in award of contracts), except construction, reconstruction, repairs or work done by employees 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 project, and there exists an agreement whereby a project user or project applicant 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 project user or project applicant without regard to the limitations of this

section 12: And provided further, however, That for the purposes of this section 12, "construction" or "acquisition" shall not include acquisition of property for project purposes. No contract shall be entered into between an authority and a contractor for construction 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.

(b) All supplies and materials costing in excess of the base amount and subsequent adjustments established pursuant to 53 Pa.C.S. § 5614(a)(1), (b) and (c.1) to be purchased directly by an authority shall be purchased only after due advertisement as hereinafter provided. The authority shall accept the lowest bid or bids, kind, quality and material being equal, but the authority shall have the right to reject any or all bids or select a single item from any bid. The provisions as to bidding shall not apply to the purchase of patented and manufactured products offered for sale in a noncompetitive market or solely by a manufacturer's authorized dealer.

(c) The terms "advertisement" or "due public notice" wherever used in this section, shall mean a notice published at least ten days before the award of any contract, in a newspaper of general circulation published in the municipality where the authority has its principal office, and if no newspaper is published therein then by publication in a newspaper in the county where the authority has its principal office: Provided, That such notice may be waived where the authority determines an emergency exists, and such supplies and materials must be immediately purchased by the said authority.

(d) No member of the authority or officer or employe 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.

(e) Subject to the aforesaid, any authority may (but without intending by this provision to limit any powers of such authority) enter into and carry out such contracts, or establish or comply with such rules and regulations concerning labor and materials and other related matters in connection with any project or portion thereof, as the authority may deem desirable, or as may be requested by any Federal agency that may assist in the financing of such project or any part thereof.

(f) The provisions of this section 12 shall not apply in respect of the construction of any project or the purchase of any equipment, materials or supplies which the authority may have had transferred to it upon completion, by purchase or otherwise, by a project applicant or project user or any other person or corporation.

(g) Notwithstanding any of the foregoing, all construction, reconstruction, repairs or work of any nature with regard to publicly owned infrastructure facilities, where the entire cost, value or amount of such construction, reconstruction, repairs or work, including labor and materials, shall exceed the base amount and subsequent adjustments established pursuant to 53 Pa.C.S. § 5614(a)(1), (b) and (c.1), shall be done only under contract or contracts to be entered into by the authority or the owner of the infrastructure facility, with the lowest responsible bidder upon proper terms, after due public notice has been given asking for competitive bids as set forth in this section or other applicable law.

(12 amended July 2, 2013, P.L.251, No.44)

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

(13 amended Dec. 17, 1993, P.L.490, No.74)

Section 14. Termination of Authority.--When any authority shall have finally paid and discharged all bonds and the interest due thereon, which shall have been secured by a mortgage on its property or a pledge of any of the revenues or receipts of a project, it shall (subject to any agreements concerning the operation or other disposition of such project) convey such project to the municipality creating the authority. When any authority shall have finally paid and discharged all bonds issued and outstanding and the interest due thereon, or shall have otherwise provided for the payment thereof by the irrevocable deposit of an amount sufficient to pay all sums due, and settled all other claims which may be outstanding against it, it may convey all its property to the municipality creating the authority and may then terminate its existence. A certificate requesting the termination of the existence of the authority shall be submitted to the municipality creating the authority. If the certificate is approved by the municipality, then the certificate endorsed with such approval shall be filed with the Secretary of the Commonwealth who shall then note the termination of existence on the record of incorporation and return the certificate with his approval shown thereon to the board. Thereupon the property of the authority shall pass to the municipality, and the authority shall cease to exist.

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

(15 amended Dec. 17, 1993, P.L.490, No.74)

Section 15.1. Mass Transportation Authority.--The participation of mass transportation authorities is optional subject to the approval of the transportation authority.

(15.1 added Dec. 17, 1993, P.L.490, No.74)

Section 15.2. Prohibition.--(a) Except as provided herein, no Commonwealth agency under the control of the executive branch shall be a project applicant under this act. Operating expenses of any Commonwealth agency under the control of the executive branch are not an eligible project cost.

(b) The Department of Public Welfare may be a project applicant to provide for the conversion of medical assistance services from a fee-for-service basis to a prepaid managed-care basis subject to prior approval of this conversion mechanism by the Health Care Financing Agency of the Federal Department of Health and Human Services and prior notice of project details and Federal approval to the chairman and minority chairman of the Senate Appropriations Committee and the chairman and minority chairman of the House Appropriations Committee. Maximum term of the bonds, notes or other evidences of indebtedness issued for this project shall be five years.

(15.2 added Dec. 17, 1993, P.L.490, No.74)

Compiler's Note: The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

Section 16. Repealer.--All acts or parts of acts are repealed in so far as they are inconsistent herewith.

Section 17. Effective Date.--This act shall take effect immediately.