

## No. 171

## AN ACT

## HB 1195

Amending the act of August 23, 1967 (P.L.251), entitled "An act providing for the incorporation as public instrumentalities of the Commonwealth and as bodies corporate and politic of industrial 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 development projects, and to borrow money and issue bonds therefor; providing for the payment of such bonds and giving security therefor, and prescribing the rights of the holders of such bonds; authorizing the lease or sale of industrial development projects to industrial, manufacturing or research and development enterprises; authorizing any county, municipality or township to transfer or convey to such authorities, any facilities or property available for industrial 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 development projects of such authorities," authorizing commercial development; further defining "authority," "cost," "industrial enterprise," "industrial development project," and "industrial occupant," defining "pollution control facilities," and further providing for purposes and powers.

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

Section 1. The title, sections 1 and 2 and clauses (1), (5), (9), (10) and (11) of section 3, act of August 23, 1967 (P.L.251), known as the "Industrial Development Authority Law," are amended to read:

## AN ACT

Providing for the incorporation as public instrumentalities of the Commonwealth and as bodies corporate and politic of industrial *and commercial* development authorities for municipalities, counties and townships; prescribing the rights, powers and duties of such authorities hereafter incorporated; authorizing such authorities to acquire, by gift or purchase, to construct, improve and maintain industrial *or commercial* development projects, and to borrow money and issue bonds therefor; providing for the payment of such bonds and giving security therefor, and prescribing the rights of the holders of such bonds; authorizing the lease or sale of industrial *or commercial* development projects to industrial, *commercial*, manufacturing or research and development enterprises; authorizing any county, municipality or township to transfer or convey to such authorities, any facilities or property available for industrial *or commercial* development projects; exempting the property and securities of such authorities from taxation; authorizing such authorities to enter into

contracts with and to accept grants from the Federal Government or any agency thereof; and providing for approval by the Secretary of Commerce of the proceedings relating to industrial *or commercial* development projects of such authorities.

Section 1. This act shall be known and may be cited as the “Industrial *and Commercial* Development Authority Law.”

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 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 can best be provided by the promotion, attraction, stimulation, rehabilitation and revitalization of industry, *commerce*, manufacturing and research and development in the Commonwealth;

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

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

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

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

(7) That additional industrial, *commercial*, manufacturing and research and development facilities could be attracted to the Commonwealth if such additional means of financing were available to construct, rehabilitate and expand industrial *or commercial buildings, or* plants and in conjunction therewith equip the same with modern machinery and equipment;

Therefore, it is hereby declared to be the policy of the Commonwealth

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

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

(1) “Authority” or “industrial *and commercial* development authority” means a public instrumentality of the Commonwealth and a body politic and corporate, created pursuant to this act.

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(5) “Cost of the industrial *or commercial* development project” or “cost of the project” or “cost” means and includes the cost of construction, the cost of acquisition of all structures, lands and other property rights and interests in land necessary to the project, the cost of demolishing, removing or relocating any buildings or structures on lands acquired or to be acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of sewage treatment, industrial waste treatment and air pollution control facilities and of all labor, materials, machinery and equipment, financing charges, interest on all bonds prior to and during construction, and for a period of six months thereafter, cost of engineering, financial and legal services, plans, specifications, studies, surveys necessary or incidental to determining the feasibility or practicability of constructing an industrial *or commercial* development project, administrative expenses, reserves for interest and for extensions, enlargements, additions and improvements, and such other expenses as may be necessary or incidental to the construction of industrial *or commercial* development projects and the placing of the same in operation.

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(9) “Industrial enterprise” means an enterprise other than a mercantile, commercial or retail enterprise, which by virtue of its size requires substantial capital and which by its nature and size has created or will create substantial employment opportunities. The term “industrial enterprise” may include warehouse, distribution and national and regional headquarters facilities. *The term “industrial enterprise” may also include enterprises directly related to tourism and recreational facilities provided such activity comprises or is a part of a planned tourist or recreational complex and provided that such activity requires substantial capital and by its nature and size has created or will create substantial employment opportunities.*

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

(11) "Industrial occupant" means any person, partnership, or corporation engaged in industrial, manufacturing or research and development activities and determined by the authority to be financially responsible to assume all obligations prescribed by the authority and this act in the leasing, sale and operation of an industrial development project, *and shall also mean a financially responsible nonprofit community industrial development agency engaged in establishing industrial development projects, whether for single or multiple occupancy for use by any person, partnership, or corporation engaged in industrial manufacturing or research and development activities.*

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Section 2. Section 3 of the act is amended by adding five clauses to read:

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

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(12.1) "Commercial enterprise" means a business enterprise other than one used for industrial purposes, which by virtue of its size requires substantial capital and which by its nature and size has created or will create substantial employment opportunities. The term "commercial enterprise" may include office buildings, hotel or motel structures, shopping centers and department stores and national and regional headquarters facilities.

(12.2) "Commercial development project" means any building or facility or combination or part thereof occupied or utilized by a commercial enterprise located within or without or partially within or without the municipality creating the authority, now existing or hereafter acquired or constructed by the authority pursuant to the terms of this act, including any or all buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, franchises, landscaping, utilities, railroad spurs and sidings, wharfs, approaches and roadways necessary or desirable in connection therewith or incidental thereto.

(12.3) "**Commercial occupant**" means any person, partnership, or corporation engaged in commercial activities and determined by the authority to be financially responsible to assume all obligations prescribed by the authority and this act in the leasing, sale and operation of a commercial development project.

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

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

Section 3. Subsection (a), clauses (8) and (9) of subsection (b) and clauses (1), (2) and (4) of subsection (d) of section 6; subsections (c), (d) and (f) of section 7; section 11 and subsections (a) and (f) of section 12 of the act are amended to read:

Section 6. Purposes and Powers; General.—(a) Every 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, industrial *or commercial* development projects. In the event of default by an industrial *or commercial* occupant, 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 industrial *or commercial* occupant.

(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:

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(8) To enter into acquisition agreements providing for (i) the construction of industrial *or commercial* development projects by either

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

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

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(d) An authority created hereunder shall have no power to:

(1) Construct or finance or aid in the construction or financing of an industrial *or commercial* development project which shall cause the removal of a manufacturing, industrial, *commercial* or research plant, facility or establishment from one area of the Commonwealth of Pennsylvania to another area of the Commonwealth.

(2) Acquire existing industrial *or commercial* development projects under circumstances which would be primarily for the purpose of directly or indirectly refinancing the obligations of or providing working capital or other funds for any industrial, *commercial*, manufacturing or research enterprise or any parent, subsidiary, affiliate or shareholder thereof, which enterprise, or any parent, subsidiary, affiliate or shareholder thereof, would thereafter continue to occupy or utilize said project; however, this limitation shall not apply to refinancing in order to improve

an existing project now financed by the authority or by any authority or nonprofit corporation heretofore recognized as agency or an instrumentality of the Commonwealth or any municipality thereof.

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(4) Finance machinery or equipment except in conjunction with the construction of a new, or the improvement of an existing industrial *or commercial* development project, *but such prohibition shall not relate to the financing of pollution control facilities*; or

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

(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 construction, improvement, operation, extension, enlargement, maintenance and repair of the project and the duties of the authority and the industrial *or commercial* occupant 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 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 construction, improvement, operation, maintenance and repair of any project, and the duties of the authority and the industrial *or commercial* occupant 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 of such bondholders); and (iv) the terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

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(f) No bonds shall be issued and sold and the construction of a project

shall not be commenced until the proceedings to be undertaken in respect of the issuance and sale of the bonds and the construction of the project have been first approved by the secretary. The chairman of the authority shall cause to be certified under seal of the authority and delivered to the secretary such documents relating to the proceedings as may be necessary and as may be required by the secretary to enable him to determine that:

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

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Section 11. Transfer of Existing Facilities to Authority.—[(a)] 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 industrial *or commercial* development projects. This section without reference to any other law, shall be deemed complete, the provisions of other laws to the contrary notwithstanding.

Section 12. Competition in Award of Contracts.—(a) All construction, reconstruction, repairs or work of any nature made directly by any authority, where the entire cost, value or amount of such construction, reconstruction, repairs or work, including labor and materials, shall exceed five thousand dollars (\$5,000), except construction, reconstruction, repairs or work done by employes of said authority, or by labor supplied under agreement with any Federal or State agency, with supplies and materials purchased as hereinafter provided, shall be done only under contract or contracts to be entered into by the authority with the lowest responsible bidder upon proper terms, after due public notice has been given asking for competitive bids as hereinafter provided: Provided, however, That where the authority is the legal title holder to the industrial *or commercial* development project, and there exists an agreement whereby an industrial *or commercial* occupant will or can acquire legal title to the said project under the then certain terms and conditions, contracts for construction, reconstruction, repair, or work of any nature, or purchase of machinery and equipment, may be awarded by the industrial *or commercial* occupant without regard to the limitations of this section 12: And provided further, however, That for the purposes of this section 12, "construction" shall not include acquisition of property for industrial *or commercial* development purposes. No contract shall be entered into between an authority and a contractor for construction or improvement or repair of any project or portion thereof, unless the contractor shall give an undertaking with a sufficient surety or sureties approved by the authority, and in an amount fixed by the authority, for the faithful performance of the contract. All contracts of surety shall



provide among other things that the contractor entering into a contract with the authority will pay for all materials furnished and services rendered for the performance of the contract, and that any person or corporation furnishing such materials or rendering such services may maintain an action to recover for the same against the obligor in the undertaking, as though such person or corporation was named therein, provided the action is brought within one year after the time the cause of action accrued.

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(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 an industrial *or commercial* occupant or any other person or corporation.

APPROVED—The 29th day of December, A. D. 1971.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 171.

A handwritten signature in cursive script, reading "C. McLaughlin Tucker".

*Secretary of the Commonwealth.*