

No. 73

AN ACT

HB 810

Amending the act of May 17, 1956 (P.L.1609, No.537), entitled "An act to promote the welfare of the people of the Commonwealth by the reduction of unemployment in certain areas of the Commonwealth determined to be critical economic areas; providing for the establishment of industrial development projects in such areas; creating The Pennsylvania Industrial Development Authority as a body corporate and politic with power to allocate funds for and make secured loans to industrial development agencies for the payment of a part of the cost of industrial development projects in critical economic areas; authorizing the Authority to enter into agreements with the Government of the United States or any Federal agency or industrial development agency; empowering the Authority to take title to, sell, convey and lease industrial development projects where necessary to protect loans made by the Pennsylvania Industrial Development Authority on industrial development projects; providing that no debt of the Commonwealth, its municipalities or political subdivisions shall be incurred in the exercise of any powers granted by this act; and providing for the examination of the accounts and affairs of the Authority; and making an appropriation," providing that the Authority may borrow money, issue notes, bonds or other evidences of indebtedness, pledge or assign its mortgages or the revenues therefrom or its revenues generally to secure the payment thereof; providing for the issuance of bonds and remedies for bondholders; reducing or removing certain industrial development agency contributions; and excluding Authority bonds and 'evidences of indebtedness from taxation.

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

Section 1. Section 5, act of May 17, 1956 (P.L.1609, No.537), known as the "Pennsylvania Industrial Development Authority Act," is amended by adding a clause and amending the last paragraph to read:

Section 5. Powers of the Authority; General.—The Authority, as a public corporation and governmental instrumentality exercising public powers of the Commonwealth, is hereby granted and shall have and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this act, including the following powers, in addition to others herein granted:

* * *

(r) To borrow money and to issue notes, bonds or other evidences of the indebtedness created thereby and to secure the payment of such notes, bonds or other evidences of the indebtedness or any part thereof by pledge or assignment of all or any of the mortgages of the Authority, its revenues and receipts therefrom or its revenues generally, and to make such agreements with the lenders or with purchasers or holders of bonds or with others in connection with any such borrowings as the Authority shall deem advisable.

¹"evidence" in original.

Provided, however, That the Authority shall have no power at any time [to borrow money or in any manner] to pledge the credit or taxing power of the Commonwealth or any of its municipalities or political subdivisions, nor shall any of its obligations be deemed to be obligations of the Commonwealth or any of its political subdivisions.

Section 2. The act is amended by adding a section to read:

Section 5.1. Powers of the Authority; Bonds.—

(a) The Authority shall have the power to issue bonds for any of its corporate purposes: Provided, however, That the principal, interest and other charges thereon are payable solely and exclusively (i) from the income and revenues from mortgages the Authority owns and holds on industrial development projects; or (ii) from its revenues generally.

(b) The bonds of the Authority shall be authorized by resolution of the board, shall be of such series, bear such date or dates, mature at such time or times, not exceeding twenty (20) years from their respective date, bear interest at such rate or rates, payable at least semiannually, 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 medium of payment and at such place or places, be subject to such terms of redemption, with or without premium and be entitled to such priorities in the revenues or receipts of the 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 the Authority to aid in the financing of industrial development 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.

(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 or any political subdivision thereof) for such obligations or restricting the same to all or any of the revenues or

receipts of the Authority from all or any of the mortgages of the Authority; (ii) the terms and provisions of the bonds; (iii) limitations on the purposes to which the proceeds of the bonds then or thereafter to be issued may be applied; (iv) the setting aside of reserves or sinking funds and the regulation and disposition thereof; (v) limitations on the issuance of additional bonds; (vi) the terms and provisions of any indenture under which the same may be issued; and (vii) any other or additional agreements with the holders of the bonds.

(d) The Authority may enter into any indentures or other agreements, with any bank or trust company, including any Federal agency and may assign and pledge all or any of the revenues or receipts of the Authority. Such indenture 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 application of funds and the safeguarding of funds on hand or on deposit; and (ii) 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 (iii) the terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

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

(f) 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. 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 (30) 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 (25%) in aggregate principal amount of the bonds then outstanding, by instrument or instruments filed in the office of the Recorder of Deeds of Dauphin 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. Such trustee and any trustee under any indenture or other agreement, may, and upon written request of the holders of (25%) (or such other percentage as may be specified in any indenture or other agreement aforesaid) in principal amount of the bonds then outstanding, shall be 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 carry out 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 (25%) (or such other percentage as may be specified in any indenture or other agreement aforesaid) of the principal amount of the bonds then outstanding, to annul such declaration and its consequences.

The Commonwealth Court shall have jurisdiction of any suit, action or proceedings, by the trustee on behalf of the bondholders. Any trustee appointed by the court or a trustee acting under an indenture or other agreement and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may exercise dominion over the mortgages of the Authority or any part thereof, the revenues or receipts from which are or may be applicable to the payment of the bonds so in default and collect and receive all 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 mortgages 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 indenture or other agreement or incident to the general representation of the bondholders in the enforcement and protection of their rights.

Section 3. Clause (1) of subsection (b) of section 6 of the act, amended May 5, 1965 (P.L.42, No.37), is amended to read:

Section 6. Powers of the Authority; Loans to Industrial Development Agencies.—When it has been determined by the Authority upon application of an industrial development agency and hearing thereon in the manner hereinafter provided, that the establishment of a particular industrial development project of such industrial development agency in a critical economic area has accomplished or will accomplish the public

purposes of this act, the Authority may contract to loan such industrial development agency an amount not in excess of the percentage of the cost of such industrial development project, as established or to be established as hereinafter set forth, subject, however, to the following conditions:

* * *

(b) The Authority may, in critical economic areas A and B, contract to loan to an industrial development agency an amount not in excess of (40%) of the cost, and in critical economic area C, may contract to loan to an industrial development agency an amount not in excess of 30% of the cost, of establishing an industrial development project established without prior Authority participation, if at the time of making such loan the Authority has determined:

(1) That in critical economic areas A and B, the industrial development agency has invested in the industrial development project funds or property in an amount or value equal to not less than (10%) of the cost of such industrial development project and all of the 'costs of establishing said industrial development project have been paid; and in a critical economic area C, the industrial development agency has invested in the industrial development project funds or property in an amount or value equal to not less than 20% of the cost of such industrial development project and all costs of establishing said industrial development project have been paid: *Provided, however, That in critical areas A, B or C, where an average of (8%) or more of the labor force has been unemployed for a period of three months or more, the Authority shall reduce the industrial development agency project percentage from (10%) to (5%) and where an average of (10%) or more of the labor force has been unemployed for a period of three months or more or where the unemployment is due to an unusual condition, the Authority shall remove the industrial development agency project percentage entirely. When the industrial development agency project percentage is reduced or removed, the share of the Authority shall be increased accordingly but not in excess of (50%) of the cost of the project.*

* * *

Section 4. The fourth paragraph of section 8 and section 10 of the act are amended to read:

Section 8. Appropriation; Industrial Development Fund.— * * *

The Authority shall also requisition, from time to time, from the Industrial Development Fund such amounts as shall be allocated and appropriated by the Authority for loans to industrial development agencies for industrial development projects. *[When] Subject to the provisions of sections 5 and 5.1 of this act and subject to the provisions of any agreements to the contrary entered into with lenders or trustees*

¹"cost" in original.

pursuant to the Authority granted in said sections 5 and 5.1, when and as the amounts so allocated and appropriated by the Authority as loans to industrial development agencies are repaid to the Authority pursuant to the terms of the mortgages and other agreements made and entered into by the Authority, the Authority shall pay such amounts into the Industrial Development Fund, it being the intent of this act that the Industrial Development Fund shall operate as a revolving fund whereby all appropriations and payments made thereto may be applied and reapplied to the purposes of this act.

* * *

Section 10. Moneys of the Authority.—*[All] Subject to the provisions of sections 5 and 5.1 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 said sections 5 and 5.1, all moneys of the Authority from whatever source derived shall be paid to the treasurer of the Authority. Said moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts, and each of such special accounts shall be continuously secured by a pledge of direct obligations of the United States of America or of the Commonwealth, having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account. Such securities shall either be deposited with the treasurer or be held by a trustee or agent satisfactory to the Authority. All banks and trust companies are authorized to give such security for such deposits. The moneys in said accounts shall be paid out on the warrant or other order of the treasurer of the Authority, or of such other person or persons as the Authority may authorize to execute such warrants or orders.*

Section 5. The act is amended by adding a section to read:

Section 10.1. Exemption from Taxation.—The effectuation of the authorized purpose of the Authority 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 it will as a government instrumentality of the Commonwealth be performing essential governmental functions in effectuating such purposes, the bonds or other evidences of indebtedness issued by the 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.

APPROVED—The 27th day of September, A. D. 1973.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly
No. 73.

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

Secretary of the Commonwealth.