

No. 2001-38

AN ACT

SB 876

Creating the Ben Franklin Technology Development Authority; defining its powers and duties; establishing the Ben Franklin Technology Development Authority Fund; and making a repeal.

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

Section 1. Short title.

This act shall be known and may be cited as the Ben Franklin Technology Development Authority Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Authority.” The Ben Franklin Technology Development Authority.

“Ben Franklin Technology Partner” or “partner.” A nonprofit corporation certified in accordance with this act.

“Board.” The Board of Directors of the Ben Franklin Technology Development Authority.

“Department.” The Department of Community and Economic Development of the Commonwealth.

“Private sector funds.” Monetary or in-kind support from private businesses, corporations, individuals, trade associations, foundations, federally and locally supported grant programs and other non-Commonwealth sources. The term includes machinery and equipment and other forms of tangible assets approved by the Ben Franklin Technology Development Authority.

“Secretary.” The Secretary of Community and Economic Development of the Commonwealth.

Section 3. Ben Franklin Technology Development Authority.

(a) **Creation.**—There is hereby created a public authority and instrumentality of the Commonwealth known as the Ben Franklin Technology Development Authority. The authority shall be a body corporate and politic and exercise the powers of the Commonwealth as an agency of the Commonwealth.

(b) **Management.**—The powers of the authority shall be exercised by the board.

(c) **Staffing.**—The department shall provide staff services to the authority. The department may, with the approval of the Governor, contract with consultants or other entities to augment these services as needed. No more than 3% of funds annually appropriated to the authority shall be used

to pay administrative costs, expenses and fees associated with the operations of the authority.

(d) Powers.—The authority, through action of the board, shall have all of the following powers:

(1) To adopt bylaws, guidelines and regulations as it deems necessary.

(2) To contract and to execute instruments necessary or convenient for the carrying on of its business.

(3) To appoint committees and subcommittees as are needed.

(4) To sue and be sued, complain and defend in court.

(5) To accept funds from all available sources.

(e) Duties.—The authority shall encourage and coordinate programs and investments which advance the competitiveness of Commonwealth companies in the global economy. The authority shall:

(1) Develop policies and implement programs which promote an entrepreneurial business environment, advanced technologies and a technology-ready work force.

(2) Select and certify four regional nonprofit corporations as partners.

(3) Coordinate funding for the programs, initiatives and actions of the authority and the partners.

(4) Award grants and other forms of financial incentives to companies, economic development agencies, educational institutions, government agencies or other entities for research activities related to economic development at academic and research institutions and community-based and economic development technology initiatives.

(5) Establish a revolving loan fund for the purpose of making financing available to technology companies.

(6) Invest in companies, economic development agencies, educational institutions, government agencies or other entities as necessary to carry out the authority's activities.

(7) Assist efforts to identify and pursue funding opportunities from the Federal Government and other sources.

(8) Establish and require audits, disclosures and other review procedures for all activities funded by the authority.

(f) Debt restriction.—Notwithstanding any other provisions of this act to the contrary, the authority may not issue any bonds, notes or any other obligation evidencing a debt or liability of the authority, the Commonwealth or any of its political subdivisions.

Section 4. Board.

(a) Members.—The authority shall be governed by a board consisting of 21 members. The following individuals shall be members of the board:

(1) The Governor.

(2) The Secretary of Community and Economic Development.

(3) The Secretary of Education.

(4) The Secretary of Administration.

(5) Six representatives from the technology business sector to be appointed by the Governor, four of whom shall be selected from the current members of the regional partners' boards of directors and at least one from the private capital community.

(6) One representative from the Pennsylvania Economic Development Association to be appointed by the Governor.

(7) One representative from the local government sector to be appointed by the Governor.

(8) One representative from the community development sector to be appointed by the Governor.

(9) One representative from organized labor to be appointed by the Governor.

(10) Three representatives from the education sector to be appointed by the Governor.

(11) Four members of the General Assembly appointed as follows:

(i) One member appointed by the President pro tempore of the Senate.

(ii) One member appointed by the Minority Leader of the Senate.

(iii) One member appointed by the Speaker of the House of Representatives.

(iv) One member appointed by the Minority Leader of the House of Representatives.

(b) Terms.—

(1) The Governor, the secretary, the Secretary of Education and the Secretary of Administration shall serve for as long as they hold their respective positions.

(2) Those remaining members of the authority initially appointed by the Governor shall serve for the following term of years:

(i) Four representatives from the private sector and two representatives from the education sector shall serve terms of four years.

(ii) Three representatives from the private sector, one representative from the education sector, the representative from the Pennsylvania Economic Development Association, the representative from the local government sector and the representative from the community development sector shall serve for terms of two years.

(3) All of the respective successors appointed under subsection (a)(5), (6), (7), (8), (9) and (10) shall serve for terms of four years or until their respective successors shall be duly appointed by the Governor. Any members appointed to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he or she is to succeed.

(4) The members of the General Assembly shall serve terms of two years, such terms to run concurrently with the term of the legislative session.

(c) **Designees.**—A public officer of the board may designate an officer or employee of the Commonwealth to represent him or her at meetings of the board. A designee may lawfully vote and otherwise act on behalf of the member of the board. The designation shall be in writing, delivered to the authority and continue in effect until revoked or amended in writing.

(d) **Compensation.**—The members of the board shall receive no compensation for their services but shall be reimbursed for their expenses actually incurred in the performance of their official duties under this act.

(e) **Organization.**—The secretary shall be the chairman and chief executive officer of the board. The chairman may designate an officer or employee of the department to chair board meetings in his absence. The board shall elect a secretary and treasurer from its members at the first meeting of each calendar year.

(f) **Quorum.**—A majority of the members of the board shall constitute a quorum of the board for the purpose of organizing the authority and conducting the business. Only members or their designees who are physically present at a meeting or able to participate fully in the deliberations by appropriate telecommunications means shall count toward a quorum of the board. Action shall be taken by a vote of a majority of the members present and voting unless otherwise specified in this act.

(g) **Committees.**—The board may appoint committees to advise and assist its work. A committee may not certify a partner or award a grant. Committees of the board shall be appointed by the chairman and may consist of board members and nonmembers.

Section 5. Ben Franklin Technology Partners.

The Ben Franklin Technology Partners shall be independent nonprofit institutions, working individually and in partnership with each other, to advance the development of new technologies in this Commonwealth. The partners will be overseen by regional boards of directors comprised of economic development, university or nonprofit research institutions and private industry representatives, with at least 50% representation from private industry. The activities of the partners may include, but not be limited to, the following:

(1) Serve as the Commonwealth's key regional partners in identifying, developing, adapting and implementing advanced technologies to enable the growth and competitiveness of existing and emerging companies through technology development, commercialization and implementation.

(2) Act as regional facilitators and managers for interactions, programs and initiatives by and among the authority, technology enterprises, economic development organizations, corporate community, academic/research institutions, government, organized labor and other interests working collaboratively to advance the development of a technology-based economy across this Commonwealth.

(3) Directly provide, and serve as the conduit to, seed and later-stage capital for existing and emerging companies involved in the development and commercialization of technologically advanced products and processes.

(4) Develop, provide or support business incubation resources and space and facilitate the development of technology business campuses.

(5) Establish and administer a research grant fund for the economic impact assessments of university-based technology development projects seeking funding through the authority.

(6) Establish partnerships to support and enhance the scale, scope and impact of initiatives that support the purpose and mission of the authority and the partners.

Section 6. Certification.

(a) Partners certified by authority.—A nonprofit corporation may submit an application for certification as a partner to the authority. After a review of the applications, the authority shall select and certify four regional nonprofit corporations as partners. The authority shall select one partner from each of the four regions of this Commonwealth meeting its criteria and the requirements of section 5. The authority shall modify or revoke a partner's certification consistent with the regulations, policies and guidelines of the authority. The authority may change the number of regions or change the minimum service boundary within a given region with a two-thirds majority vote of the board. A partner in existence and in receipt of funds from the department as of the effective date of this act is hereby deemed certified as a partner.

(b) Partners certified by secretary.—The secretary may certify nonprofit corporations as partners and may establish their geographical boundaries. Such partners and geographical boundaries shall be in addition to those certified or established by the authority under subsection (a).

Section 7. Grants to partners.

(a) Awards.—A partner may apply for a grant by submitting an application to the authority. After review and approval of the application, the authority shall sign a grant agreement with the partner and award a grant. The grant agreement shall permit the partner to award grants and other forms of financial assistance to entities only if matched by private sector funds on a minimum basis to be established by the authority.

(b) Implementation.—Upon receipt of a grant pursuant to this section, a partner shall implement the terms of the grant. Failure to comply with the terms of the grant agreement shall result in forfeiture of the grant.

Section 8. Reporting.

A partner shall annually submit the following information to the authority:

- (1) The partner's current mailing address and telephone number.
- (2) A copy of the partner's current articles of incorporation and bylaws.

(3) A list of the partner's current officers and directors.

(4) An independent audit covering all funds received from the Commonwealth and funds received from Commonwealth support, such as paybacks, reimbursements, investment returns, fees for services, cash reserves, interest, return of depreciation and any other similar forms of income which result at least partially from initial expenditure of Commonwealth funds. The audit shall include all of the communications between the auditors and the managers of the partner. The audit shall be conducted in accordance with appropriate government auditing standards and shall be a public record. The partner shall provide copies of all audits to the department.

(5) Upon request, an independent audit covering all funds received and partner activities supported by non-Commonwealth sources.

(6) Such other information as the authority may require.

Section 9. Records.

Upon request, a partner shall permit authorized employees or agents of the authority to inspect its books and records during regular business hours.

Section 10. Ben Franklin Technology Development Authority Fund.

(a) Establishment.—There is hereby established in the State Treasury a special fund to be known as the Ben Franklin Technology Development Authority Fund into which shall be deposited any State appropriations to the authority, to the partners, to technology and research activities assigned to the authority, any other State appropriations for a purpose related to this act, Federal funds, royalties, gifts, grants, bequests, devises, private funds and funds from any other source which are designated to the authority. Funds appropriated by the General Assembly, including Federal funds, which are earmarked for a specific program or purpose, including the Ben Franklin Technology Partners and university research efforts, shall be allocated directly to that program or purpose.

(b) Appropriation of moneys.—Moneys in the fund, including Federal funds, shall be annually appropriated by the General Assembly for the purposes set forth in this act.

Section 11. Transfers.

All allocations, appropriations, equipment, files, records, contracts, agreements, obligations and other materials of the board of the Ben Franklin/IRC Partnership Fund under the act of July 2, 1993 (P.L.439, No.64), known as the Ben Franklin/IRC Partnership Act, as they pertain to the Ben Franklin Technology Centers are hereby transferred to the authority with the same force and effect as if the allocation and appropriations have been made to and the items had been the property of the authority in the first instance and as if the contracts, agreements and obligations had been incurred or entered into by the authority. The Pennsylvania Technology Investment Authority revolving loan account in the department is hereby transferred to the Ben Franklin Technology Development Authority Fund and may be established as a revolving loan fund by the authority.

Section 12. Reports to General Assembly.

(a) **Duty.**—The authority shall submit a report specifying the activities of the authority and each partner and detailing the following:

(1) The budget of the authority and of each partner.

(2) Individual projects and activities of the authority and of each partner.

(3) The progress of the authority and of each partner in achieving the goals and implementing the policies as specified in sections 3 and 5.

(b) **Transmittal.**—The authority shall submit this report to the following:

(1) The chairman of the Community and Economic Development Committee of the Senate.

(2) The minority chairman of the Community and Economic Development Committee of the Senate.

(3) The chairman of the Commerce and Economic Development Committee of the House of Representatives.

(4) The minority chairman of the Commerce and Economic Development Committee of the House of Representatives.

(c) **Timely submission of report.**—The first report shall be submitted on or before March 1, 2002. Thereafter, reports shall be submitted by March 1 of each year.

(d) **Cooperation of partners.**—A partner shall submit information to the authority, at a time and in a manner specified by the authority, which enables the authority to comply with the requirements of this section.

Section 13. Regulations.

The authority shall develop policies and guidelines and promulgate regulations as necessary to carry out the provisions of this act.

Section 14. Repeal.

As much of the act of July 2, 1993 (P.L.439, No.64), known as the Ben Franklin/IRC Partnership Act, as refers to the Ben Franklin technology centers is repealed.

Section 15. Effective date.

This act shall take effect July 1, 2001, or immediately, whichever is later.

APPROVED—The 22nd day of June, A.D. 2001.

THOMAS J. RIDGE