

COMMERCE AND TRADE
Title 12

TABLE OF CONTENTS

TITLE 12
COMMERCE AND TRADE

PART I. GENERAL PROVISIONS

Chapter 1. Preliminary Provisions

101. Definitions.

Chapter 3. Economic Development Financing Strategy

301. Scope.
302. Definitions.
303. Development.
304. Oversight.

Chapter 5. Small Business Council

501. Scope.
502. Definitions.
503. Small Business Council.
504. Regulatory review.

Chapter 7. Tax-Exempt Bond Allocation (Reserved)

PART II. ECONOMIC DEVELOPMENT ENTITIES

Chapter 11. Ben Franklin (Reserved)

Chapter 13. Industrial Resource Centers (Reserved)

Chapter 15. (Reserved)

Chapter 17. (Reserved)

Chapter 19. (Reserved)

PART III. ECONOMIC DEVELOPMENT PROGRAMS

Chapter 21. Opportunity Grants

2101. Scope.
2102. Definitions.
2103. Establishment.
2104. Application.
2105. Review.
2106. Approval.
2107. Penalty.
2108. Limitations.
2109. Guidelines.

Chapter 23. Small Business First

- 2301. Scope.
- 2302. Definitions.
- 2303. Establishment.
- 2304. Fund and accounts.
- 2305. Department responsibilities.
- 2306. Capital development loans.
- 2307. EDA loans.
- 2308. Loans in distressed communities.
- 2309. Pollution prevention assistance loans.
- 2310. Export financing loans.
- 2311. Reporting and inspection.
- 2312. Limitations.

Chapter 25. Industrial Development Assistance (Reserved)

Chapter 27. Customized Job Training (Reserved)

Chapter 29. Machinery and Equipment Loans

- 2901. Scope.
- 2902. Definitions.
- 2903. Establishment.
- 2904. Machinery and Equipment Loan Fund.
- 2905. Eligibility for loans; terms and conditions.
- 2906. Application and administration.
- 2907. Powers of secretary.
- 2908. Reporting and inspection.
- 2909. Nondiscrimination.
- 2910. Conflict of interest.
- 2911. Reports to General Assembly.
- 2912. Guidelines.

Chapter 31. Family Savings Account (Reserved)

Chapter 33. Economic Enhancement (Reserved)

Chapter 34. Infrastructure and Facilities Improvement Program

- 3401. Scope of chapter.
- 3402. Definitions.
- 3403. Establishment.
- 3404. Application.
- 3405. Review.
- 3406. Approval.

Chapter 35. Keystone Opportunity Zones (Reserved)

Chapter 37. Keystone Innovation Zones

- 3701. Scope.
- 3702. Definitions.
- 3703. Program.
- 3704. Assistance.
- 3705. Keystone innovation grants.
- 3706. Keystone innovation zone tax credits.
- 3707. Guidelines.
- 3708. Annual report.

Chapter 39. Water Supply and Wastewater Infrastructure

Capitalization

- 3901. Scope of chapter.
- 3902. Definitions.
- 3903. Establishment.
- 3904. Award of grants.
- 3905. Award and administration of loans.
- 3906. Funds.
- 3907. Commonwealth indebtedness.

Chapter 41. Film Production Grants

- 4101. Scope of chapter.
- 4102. Definitions.
- 4103. Establishment.
- 4104. Application.
- 4105. Review.
- 4106. Approval.
- 4107. Penalty.
- 4108. Limitations.
- 4109. Guidelines.

Chapter 51. Fraudulent Transfers

- 5101. Short title of chapter and definitions.
- 5102. Insolvency.
- 5103. Value.
- 5104. Transfers fraudulent as to present and future creditors.
- 5105. Transfers fraudulent as to present creditors.
- 5106. When transfer is made or obligation is incurred.
- 5107. Remedies of creditors.
- 5108. Defenses, liability and protection of transferee.
- 5109. Extinguishment of cause of action.
- 5110. Supplementary provisions.

Chapter 53. Trade Secrets

- 5301. Short title of chapter.
- 5302. Definitions.
- 5303. Injunctive relief.
- 5304. Damages.
- 5305. Attorney fees.
- 5306. Preservation of secrecy.
- 5307. Statute of limitations.
- 5308. Effect on other law.

Chapter 97. Foreign Currency

- 9701. Continuity of contract under European Monetary Union.

Chapter 98. Assembled Industrial Plant Doctrine

- 9801. Assembled industrial plant doctrine abolished.

TITLE 12 COMMERCE AND TRADE

Part

- I. General Provisions
- II. Economic Development Entities
- III. Economic Development Programs

Enactment. Unless otherwise noted, the provisions of Title 12 were added December 3, 1993, P.L.479, No.70, effective in 60 days.

Special Provisions in Appendix. See sections 2 and 4 of Act 70 of 1993 in the appendix to this title for special provisions relating to statutory construction and applicability.

See section 1 of Act 12 of 2004 in the appendix to this title for special provisions relating to legislative findings and declarations.

PART I
GENERAL PROVISIONS

Enactment. Part I was added February 12, 2004, P.L.99, No.12, effective immediately.

Chapter

- 1. Preliminary Provisions
- 3. Economic Development Financing Strategy
- 5. Small Business Council
- 7. Tax-Exempt Bond Allocation (Reserved)

CHAPTER 1
PRELIMINARY PROVISIONS

Sec.

101. Definitions.

Enactment. Chapter 1 was added February 12, 2004, P.L.99, No.12, effective immediately.

101. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Department." The Department of Community and Economic Development of the Commonwealth.

"Secretary." The Secretary of Community and Economic Development.

CHAPTER 3
ECONOMIC DEVELOPMENT FINANCING STRATEGY

Sec.

- 301. Scope.
- 302. Definitions.
- 303. Development.
- 304. Oversight.

Enactment. Chapter 3 was added February 12, 2004, P.L.99, No.12, effective immediately.

Special Provisions in Appendix. See section 4(1) of Act 12 of 2004 in the appendix to this title for special provisions relating to continuation of prior law.

Cross References. Chapter 3 is referred to in section 2305 of this title.

301. Scope.

This chapter relates to the development of an annual economic development financing strategy.

302. Definitions.

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

"Economic development program." A program which is administered by the department, including programs administered or staffed by the department, and which provides financial assistance for economic development to persons. The term includes all of the following:

- (1) Any program created under Part III (relating to economic development programs).
- (2) Any program of an entity created under Part IV (relating to economic development financing).
- (3) The Pennsylvania Industrial Development Authority.
- (4) The Pennsylvania Minority Business Development Authority.
- (5) The Infrastructure Development Program.
- (6) The Industrial Sites Reuse Program.
- (7) The tax credit programs established in Articles XVII-B and XVIII-B of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

References in Text. Part IV, referred to in the def. of "economic development program," does not exist.

303. Development.

The department shall annually develop a report containing a financing strategy for economic development within this Commonwealth. In developing the report, the department shall gather input and recommendations from businesses, community leaders and organizations, legislators and private citizens. The report shall include all of the following:

- (1) A financial audit or statement of operations for each economic development program.
- (2) A narrative description of accomplishments for each economic development program during the preceding fiscal year.
- (3) A detailed description of the parameters of operation for the economic development programs during the upcoming fiscal year. The description shall include the terms and conditions under which the economic development programs shall be administered.
- (4) A description of the performance measurements and accountability factors to be applied and the performance targets or goals to be met for each economic development program.
- (5) A description of long-range planning for the economic development programs through the next five fiscal years.
- (6) A list of the loans, grants or credits approved for the economic development programs during the fiscal year. The list shall include a brief description of and details

regarding each loan, grant or credit approved, including penalties imposed by the department.

(7) A review of pending projects.

304. Oversight.

Concurrent with the submission of the Governor's annual budget message, the department shall submit the report required by this chapter to all of the following:

(1) The Secretary of the Senate.

(2) The chairperson of the Appropriations Committee of the Senate.

(3) The Chief Clerk of the House of Representatives.

(4) The chairperson of the Appropriations Committee of the House of Representatives.

CHAPTER 5
SMALL BUSINESS COUNCIL

Sec.

501. Scope.

502. Definitions.

503. Small Business Council.

504. Regulatory review.

Enactment. Chapter 5 was added February 12, 2004, P.L.99, No.12, effective immediately.

Special Provisions in Appendix. See section 4(2) of Act 12 of 2004 in the appendix to this title for special provisions relating to continuation of prior law.

501. Scope.

This chapter relates to the Small Business Council.

502. Definitions.

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

"Council." The Small Business Council established under section 503 (relating to Small Business Council).

"Executive agency." The Governor and the departments, boards, commissions, authorities and other officers and agencies of the Commonwealth. The term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies or any independent agency or State-affiliated entity.

"Small business." A person that employs fewer than 100 employees.

503. Small Business Council.

(a) Establishment.--There is established within the department an agency to be known as the Small Business Council. The council shall do all of the following:

(1) Assist with the development of policies and regulations which affect small businesses within this Commonwealth.

(2) Provide advice relating to the nature of small business practices and problems in this Commonwealth.

(3) Provide a review of existing and proposed policies and regulations which are relevant to small business.

(b) Composition.--The council shall be composed of 13 members. The secretary shall serve ex officio. Twelve members shall be appointed as follows:

(1) Four individuals appointed by the Governor.

(2) Two individuals appointed by the President pro tempore of the Senate.

(3) Two individuals appointed by the Minority Leader of the Senate.

(4) Two individuals appointed by the Speaker of the House of Representatives.

(5) Two individuals appointed by the Minority Leader of the House of Representatives.

(c) Qualifications.--In order to be eligible for appointment to the council, an individual must:

(1) have a background in improving small businesses; and

(2) be one of the following:

(i) a present owner or operator of a small business within this Commonwealth;

(ii) a member of the academic community who has expertise regarding small business practices; or

(iii) a professional who specializes in representing small businesses.

(d) Term.--Each member of the council shall serve for a period of two years.

(e) Organization.--The secretary shall serve as chairperson.

(f) Meetings.--The council shall meet at the call of the chairperson.

(g) Quorum.--A majority of the board shall constitute a quorum. A majority of the members present shall be necessary to transact business on behalf of the council.

(h) Expenses.--A member shall not receive compensation or remuneration but shall be entitled to reimbursement for all reasonable and necessary actual expenses.

(i) Administrative assistance.--The department shall do all of the following:

(1) Provide administrative and technical support to the council.

(2) Publish notice of council meetings in accordance with 65 Pa.C.S. Ch. 7 (relating to open meetings).

(3) Maintain a mailing list of persons who have requested specific notification of meetings and activities of the council.

(4) Designate a deputy secretary to attend council meetings and to serve as the public's liaison of the council.

(j) Cooperation.--Upon the council's request, an executive agency shall provide the council with officially promulgated regulatory and nonregulatory documents which regulate or would regulate small businesses.

Cross References. Section 503 is referred to in section 502 of this title.

504. Regulatory review.

(a) Notification.--To the extent known to the secretary, the department shall, on a semiannual basis, provide the council with a list of regulations being proposed by all executive agencies which may affect small businesses in this Commonwealth.

(b) Conference.--The department shall, upon request of the council, arrange a meeting between the council and representatives of an executive agency to discuss regulatory proposals and policy initiatives of the executive agency which might affect small businesses in this Commonwealth.

(c) Written comments.--The council shall provide the

department with written comments regarding the council's position on the proposed regulations. The department shall transmit the comments to the appropriate executive agencies. The written comments shall include an impact statement and any other information which the council deems necessary for the public to make an informed opinion on the proposals.

(d) Exceptions.--The requirements under subsections (a) and (b) shall not apply to the promulgation of the following regulations relating to small businesses:

- (1) Regulations required by court order.
- (2) Regulations necessitated by a Federal or State declaration of emergency.
- (3) Interim regulations which are authorized by statute.

CHAPTER 7
TAX-EXEMPT BOND ALLOCATION
(Reserved)

Enactment. Chapter 7 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

PART II
ECONOMIC DEVELOPMENT ENTITIES

Chapter

11. Ben Franklin (Reserved)
13. Industrial Resource Centers (Reserved)
15. (Reserved)
17. (Reserved)
19. (Reserved)

Enactment. Part II was added February 12, 2004, P.L.99, No.12, effective immediately.

CHAPTER 11
BEN FRANKLIN
(Reserved)

Enactment. Chapter 11 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

CHAPTER 13
INDUSTRIAL RESOURCE CENTERS
(Reserved)

Enactment. Chapter 13 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

CHAPTER 15
(Reserved)

Enactment. Chapter 15 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

CHAPTER 17
(Reserved)

Enactment. Chapter 17 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

CHAPTER 19
(Reserved)

Enactment. Chapter 19 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

PART III
ECONOMIC DEVELOPMENT PROGRAMS

Chapter

- 21. Opportunity Grants
- 23. Small Business First
- 25. Industrial Development Assistance (Reserved)
- 27. Customized Job Training (Reserved)
- 29. Machinery and Equipment Loans
- 31. Family Savings Account (Reserved)
- 33. Economic Enhancement (Reserved)
- 34. Infrastructure and Facilities Improvement Program
- 35. Keystone Opportunity Zones (Reserved)
- 37. Keystone Innovation Zones
- 39. Water Supply and Wastewater Infrastructure Capitalization
- 41. Film Production Grants

Enactment. Part III was added February 12, 2004, P.L.99, No.12, effective immediately.

CHAPTER 21
OPPORTUNITY GRANTS

Sec.

- 2101. Scope.
- 2102. Definitions.
- 2103. Establishment.
- 2104. Application.
- 2105. Review.
- 2106. Approval.
- 2107. Penalty.
- 2108. Limitations.
- 2109. Guidelines.

Enactment. Chapter 21 was added February 12, 2004, P.L.99, No.12, effective immediately.

Special Provisions in Appendix. See section 4(3) of Act 12 of 2004 in the appendix to this title for special provisions relating to continuation of prior law.

- 2101. Scope.

This chapter relates to the Opportunity Grant Program.

- 2102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the

context clearly indicates otherwise:

"Applicant." A person that applies for a grant in accordance with this chapter.

"Developer." A person that has as a purpose the promotion or construction of economic development projects and that is engaged in the development of real estate for use by more than one person.

"Eligible recipient." Any of the following persons:

(1) A municipality.

(2) An entity created under the act of August 23, 1967 (P.L.251, No.102), known as the Economic Development Financing Law.

(3) An entity certified as an industrial development agency under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

(4) An entity created under 53 Pa.C.S. Ch. 56 (relating to municipal authorities) or under the former act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945.

(5) An entity created under the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law.

(6) A developer.

(7) A person that is engaged in any of the following activities:

(i) The production or processing of farm commodities.

(ii) Manufacturing.

(iii) Research and development.

(iv) Export services.

(v) Any other activity which offers a significant economic impact on the Commonwealth, as determined by the department.

"Eligible use." Any of the following activities:

(1) Job training.

(2) The acquisition of interest in land, buildings or rights-of-way.

(3) The construction or rehabilitation of buildings.

(4) The construction or rehabilitation of infrastructure.

(5) The purchase or upgrading of machinery and equipment.

(6) Working capital.

(7) Site preparation, including demolition and clearance.

(8) Environmental assessments.

(9) Remediation of hazardous material.

(10) Architectural and engineering fees up to 10% of the award.

"Job-creating economic development." Includes the expansion or preservation of existing industry.

"Program." The Opportunity Grant Program established in section 2103 (relating to establishment.)

"Project." An activity conducted in this Commonwealth.

"Recipient." A person who receives a grant under this chapter.

2103. Establishment.

There is established within the department a program to be known as the Opportunity Grant Program. The program shall be

administered by the department to provide grants to eligible persons for certain projects which encourage job-creating economic development within this Commonwealth.

Cross References. Section 2103 is referred to in section 2102 of this title.

2104. Application.

A person may submit an application to the department requesting a grant for a project. The application shall be on the form required by the department and shall include or demonstrate all of the following:

- (1) The name and address of the applicant.
- (2) A statement that the applicant is an eligible recipient under the program.
- (3) A statement of the amount of grant sought.
- (4) A statement of the project, including a detailed statement of the cost of the project.
- (5) A statement identifying the economic impact of the project to the region and the estimated impact on State and local revenues.
- (6) A commitment of private matching funds of at least \$4 for every \$1 of grant funds, and of the balance of funding for the entire project cost, from a responsible source.
- (7) A commitment from the applicant to complete the project.
- (8) Any other information required by the department.

Cross References. Section 2104 is referred to in section 2105 of this title.

2105. Review.

The department shall review the application to determine if the applicant has met all of the criteria set forth in section 2104 (relating to application).

2106. Approval.

The following shall apply:

- (1) Upon being satisfied that all requirements have been met, the department may approve the application and award a grant.
- (2) Prior to providing grant funds to the applicant, the department shall enter into a contract with the applicant. The contract shall include provisions requiring the applicant to use the grant to pay the costs of the project.
- (3) The department may impose any other terms and conditions on the grants authorized by this chapter as the department determines is in the best interests of the Commonwealth, including a provision requiring collateral to secure repayment of any penalty imposed under the program.

2107. Penalty.

(a) Imposition.--Except as provided in subsection (b), the department shall impose a penalty upon a recipient for any of the following:

- (1) Failing to create the number of jobs specified in the recipient's application.
- (2) Failing to inject the required amount of private matching funds into the project.
- (3) Failing to operate at the project site for a minimum period of five years.

(b) Exception.--The department may waive the penalty required by subsection (a) if the department determines that the

failure was due to circumstances outside the control of the recipient.

(c) Amount.--The amount of the penalty shall be equal to the full amount of the grant received plus an additional amount of up to 10% of the amount of the grant received. The penalty shall be payable in one lump sum or in installments, with or without interest, as the department deems appropriate.

2108. Limitations.

(1) An applicant may not receive a grant under this chapter for more than two consecutive fiscal years for the same project.

(2) A grant awarded under this chapter may not be used to do any of the following:

(i) Refinance or retire existing debt.

(ii) Pay costs unrelated to a project location at a site in this Commonwealth.

(3) In no case shall the aggregate amount of grants paid in any fiscal year under this chapter exceed the annual appropriation to the department for the program.

(4) A grant awarded under this chapter shall in no way constitute an entitlement derived from the Commonwealth or a claim on any other funds of the Commonwealth.

2109. Guidelines.

The department shall develop written guidelines for the program. The guidelines shall do all of the following:

(1) Limit grant size for any single project.

(2) Clarify eligible uses of grants.

(3) Clarify standards for eligibility.

(4) Require geographic diversity of funded projects.

CHAPTER 23
SMALL BUSINESS FIRST

Sec.

2301. Scope.

2302. Definitions.

2303. Establishment.

2304. Fund and accounts.

2305. Department responsibilities.

2306. Capital development loans.

2307. EDA loans.

2308. Loans in distressed communities.

2309. Pollution prevention assistance loans.

2310. Export financing loans.

2311. Reporting and inspection.

2312. Limitations.

Enactment. Chapter 23 was added February 12, 2004, P.L.99, No.12, effective immediately.

Special Provisions in Appendix. See section 4(4) of Act 12 of 2004 in the appendix to this title for special provisions relating to continuation of prior law.

Cross References. Chapter 23 is referred to in section 1552 of Title 64 (Public Authorities and Quasi-Public Corporations).

2301. Scope.

This chapter relates to the Small Business First Program.

2302. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the

context clearly indicates otherwise:

"Agricultural processor." A person that adds value by subjecting one or more farm commodities to a process of manufacture, development or preparation for sale or a person that converts a farm product into a marketable form.

"Agricultural producer." A person involved in the management and use of a normal agricultural operation for the production of a farm commodity.

"Apparel products." Products manufactured, woven, cut, sewn or otherwise similarly processed by mechanical or human effort from fabrics, leather or cloth and made for use as clothing, shoes or other attire.

"Applicant." A person that applies for a loan in accordance with this chapter.

"Area loan organization." A local development district, an industrial development agency organized and existing under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act, or any other nonprofit economic development organization certified by the department as possessing the qualifications necessary to evaluate and administer loans made under this chapter.

"Capital development project." Land, buildings, equipment and machinery and working capital which is acquired, constructed, renovated or used by a small business in accordance with any of the following:

(1) As part of a for-profit project or venture not of a mercantile or service-related nature, except for hospitality industry projects.

(2) As part of an effort to:

(i) bring a small business into compliance with Federal or State environmental laws or regulations;

(ii) complete an approved remediation project; or

(iii) permit a small business to adopt generally acceptable pollution prevention practices.

(3) As part of an effort to provide assistance to a small business that is a recycler of municipal or commercial waste or that is a manufacturer using recycled municipal or commercial waste materials.

(4) As part of an effort to assist a small business with defense conversion activities.

(5) As part of a for-profit project or venture to manufacture products to be exported out of the United States by a small business which is not of a mercantile or service-related nature, except for export-related services and international export-related mercantile ventures or advanced technology and computer-related services and mercantile ventures and which will increase this Commonwealth's national or international market shares.

(6) As part of a for-profit project or venture that meets the requirements of section 2308 (relating to loans in distressed communities)

(7) As part of an effort to assist in the start-up or expansion of a for-profit or not-for-profit child day-care center subject to licensure by the Commonwealth.

"Child day-care center." Any premises in which child day care is provided simultaneously for seven or more children who are not related to the provider.

"Community development institution." Any of the following:

(1) An area loan organization for a distressed

community.

(2) A community development financial institution located in a distressed community and approved by the department.

"Distressed community." A community which has any of the following:

(1) A census tract or other specifically defined geographic area in which there is any of the following:

(i) A median income below 80% of the median income for the United States or this Commonwealth.

(ii) Twenty percent or more of the population is below the poverty level by family size published by the Bureau of the Census.

(iii) An unemployment rate 50% higher than the national average.

(2) An area which is designated a subzone, expansion subzone or improvement subzone under the act of October 6, 1998 (P.L.705, No.92), known as the Keystone Opportunity Zone and Keystone Opportunity Expansion Zone Act.

(3) Any other geographic area designated by the department as distressed. The designation shall be published in the Pennsylvania Bulletin.

"EDA loan." A loan made under this chapter utilizing funds made available to the department under the Public Works and Economic Development Act of 1965 (Public Law 89-136, 42 U.S.C. 3121 et seq.).

"Ex-Im Bank." The Export-Import Bank of the United States.

"Export activity." An activity undertaken by a person within this Commonwealth related to exports.

"Export business." A person that is engaged in a for-profit enterprise involving export activities and that employs 250 or fewer individuals.

"Exports." Goods or services to be sold or performed outside the United States.

"Farm commodity." Any Pennsylvania-grown agricultural, horticultural, aquacultural, vegetable, fruit and floricultural product of the soil, livestock and meats, wools, hides, furs, poultry, eggs, dairy products, nuts, mushrooms, honey products and forest products.

"Fund." The Small Business First Fund continued under section 2304 (relating to fund and accounts).

"Hazardous substance." Any element, compound or material which is any of the following:

(1) Regulated as a hazardous air pollutant under section 6.6 of the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act.

(2) Defined as a hazardous waste under section 103 of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

(3) Regulated under the act of December 7, 1990 (P.L.639, No.165), known as the Hazardous Material Emergency Planning and Response Act.

"Hospitality industry project." A for-profit project or venture which involves a small business that operates a hotel, motel or other lodging facility and that employs at least five full-time equivalent employees at the time an application is submitted to the department for financing. The term includes a for-profit project or venture which involves a small business that operates a restaurant or food service operation open to the

public, that has been in continuous operation for at least five years and that employs at least five full-time equivalent employees at the time an application is submitted.

"Insurance policy." An export credit insurance policy for small businesses offered by the Export-Import Bank of the United States.

"Natural disaster." As defined in 35 Pa.C.S. 7102 (relating to definitions).

"Normal agricultural operation." As defined in section 2 of the act of June 10, 1982 (P.L.454, No.133), entitled "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances."

"Pollution prevention." The reduction or elimination of pollution at its source. The term does not include any of the following:

- (1) A substitution of one hazardous or toxic substance for another which will cause an increased risk to the environment or to human health.
- (2) A cross-media transfer.
- (3) A delisting of a hazardous waste or toxic chemical.

"Pollution prevention assistance agency." Any of the following:

- (1) An area loan organization.
- (2) An industrial resource center created pursuant to the act of June 22, 2001 (P.L.400, No.31), known as the Industrial Resources Center Partnership Act.

"Pollution prevention infrastructure." A capital development project which permits a small business to adopt or install pollution prevention equipment or processes to:

- (1) Reduce or reuse raw materials onsite.
- (2) Reduce the production of waste.
- (3) Reduce energy consumption.

"Program." The Small Business First Program established under section 2303 (relating to establishment).

"Reuse." Use of a product or component in its original form more than once.

"Small business." A person that is engaged in a for-profit enterprise and that employs 100 or fewer individuals. The term includes the following:

- (1) An enterprise located in a small business incubator facility.
- (2) An agricultural processor.
- (3) An agricultural producer.
- (4) An enterprise which manufactures apparel products.
- (5) An enterprise which is a for-profit or not-for-profit child day-care center subject to licensure by the Commonwealth.

"Working capital." Capital used by a small business for operations, excluding fixed assets and production machinery and equipment.

References in Text. The name of the Keystone Opportunity Zone and Keystone Opportunity Expansion Zone Act was changed to the Keystone Opportunity Zone, Keystone Opportunity Expansion Zone and Keystone Opportunity Improvement Zone Act.

2303. Establishment.

There is established within the department a program to be known as the Small Business First Program. The program shall be administered by the department and provide loans to eligible

persons for certain projects which encourage job-creating and job-preserving economic development within this Commonwealth.

Cross References. Section 2303 is referred to in section 2302 of this title.

2304. Fund and accounts.

(a) Fund.--The Small Business First Fund, created under section 1302(a) of the act of June 29, 1996 (P.L.434, No.67), known as the Job Enhancement Act, is continued. The Treasury Department shall credit the following to the fund:

(1) Appropriations made by the General Assembly to the department for the program.

(2) Federal funds made available under the Public Works and Economic Development Act of 1965 (Public Law 89-136, 42 U.S.C. 3121 et seq.) or any other Federal statute, regulation or program for the program.

(3) Payments from recipients of loans made from the fund.

(4) Payments from recipients of loans made under the former act of July 2, 1984 (P.L.545, No.109), known as the Capital Loan Fund Act.

(5) Interest income derived from investment of the money in the fund.

(6) Any other deposits, payments or contributions from any other source made available to the department for the program.

(b) Pollution prevention assistance.--The Pollution Prevention Assistance Account, created under the act of June 29, 1996 (P.L.434, No.67), known as the Job Enhancement Act, is continued. The Treasury Department shall credit the following to this account:

(1) Appropriations made by the General Assembly to the department for pollution prevention assistance.

(2) Payments from recipients of loans made from the Pollution Prevention Assistance Account.

(3) Transfers from the Hazardous Sites Cleanup Fund as established in section 602.3 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(4) Interest income derived from investment of the money in the Pollution Prevention Assistance Account.

(5) Any other deposits, payments or contributions from any other source made available to the department for pollution prevention assistance.

(c) Use of fund.--

(1) Money in the fund may be used as follows:

(i) By the department to make loans in accordance with this chapter and for administrative costs of the department in administering the program.

(ii) By area loan organizations for administrative costs associated with the program which are approved by the department.

(2) Money from the fund derived from appropriations specified for export financing assistance may be deposited by the department in banks or trust companies in special accounts. The special accounts must be continuously secured by a pledge of direct obligations of the United States or of the Commonwealth having an aggregate market value, exclusive of accrued interest, at least equal to the balance on deposit in the account. The securities shall be deposited with the

department to be held by a trustee or agent satisfactory to the department. Banks and trust companies are authorized to give security under this paragraph. Money in these special accounts shall be paid out on order of the department.

(d) Use of Pollution Prevention Assistance Account.--Money in the Pollution Prevention Assistance Account may be used by the department to provide loans to small businesses for the adoption or installation of pollution-prevention or energy-efficient equipment or processes in accordance with section 2309 (relating to pollution prevention assistance loans).

Cross References. Section 2304 is referred to in sections 2302, 2310 of this title.

2305. Department responsibilities.

(a) General rule.--The department shall do all of the following:

- (1) Administer the program.
- (2) Establish written guidelines as necessary. Any guidelines established shall be included in the report required by Chapter 3 (relating to economic development financing strategy).
- (3) Deposit payments made by recipients in the fund or the Pollution Prevention Assistance Account, as appropriate.
- (4) Approve standards for area loan organization application fees.
- (5) Approve community development financial institutions.

(b) Program.--In administering the program, the department may do any of the following:

- (1) Provide grants or other financial assistance to area loan organizations for any of the following purposes:
 - (i) To establish loan reserve funds.
 - (ii) To reimburse loan losses to commercial banks and other financial institutions as a means of encouraging the expansion and financing of small businesses.
- (2) Apply to the Ex-Im Bank for delegated authority lender status under the Ex-Im Bank's Working Capital Guaranty Program.
- (3) Utilize the outstanding portfolio of loans made under this chapter to raise additional funds by selling, securing, hypothecating or otherwise using such loan proceeds as a financing vehicle if the funds raised are used by the department for either of the following purposes:
 - (i) To make new and additional loans under this chapter.
 - (ii) To pay costs associated with financing.

2306. Capital development loans.

(a) Application.--A small business may submit an application and any applicable application fee to its area loan organization requesting a loan for certain costs of a capital development project. The application shall be on the form required by the department and shall include or demonstrate all of the following:

- (1) The name and address of the applicant.
- (2) A statement of the amount of loan assistance sought.
- (3) A statement of the capital development project, including a detailed statement of the cost of the project.
- (4) A financial commitment from a responsible source for

any cost of the capital development project in excess of the amount requested.

(5) Any other information required by the department.

(b) Area loan organization review.--

(1) Upon receipt of a completed application, an area loan organization shall investigate and determine all of the following:

(i) If the applicant is a small business.

(ii) If the project is a capital development project.

(iii) If, when the applicant is a small business, the capital development project demonstrates a substantial likelihood of creating or preserving employment activities in this Commonwealth or if, when the applicant is an agricultural producer, the project demonstrates a substantial likelihood of enhancing and growing normal agriculture operations.

(iv) The ability of the applicant to meet and satisfy the debt service as it becomes due and payable.

(v) The existence and sufficiency of collateral for the loan.

(vi) Relevant criminal and credit history and ratings of the applicant as determined from outside credit reporting services and other sources.

(vii) The number of employment opportunities to be created or preserved by the proposed capital development project.

(viii) If the applicant complied with all other criteria established by the department.

(2) Upon being satisfied that all requirements have been met, the area loan organizations shall recommend the applicant to the department and forward the application with all supporting documentation to the department for its review and approval.

(c) Department review.--

(1) Within 30 days of receiving a recommendation and a completed application, the department shall review the application. If the department is satisfied that all requirements have been met, the department may approve the loan request in accordance with the following:

(i) A loan for land, buildings and machinery and equipment may not exceed \$200,000 or 50% of the total capital development project costs, whichever is less. For the purposes of this subparagraph, capital development project costs incurred during the 12-month period prior to the date of submission of the application to the department shall be considered part of the total capital development project costs.

(ii) A loan for working capital may not exceed \$100,000 or 50% of the total capital development project costs, whichever is less.

(iii) Except for loans to agricultural producers, a loan must create or preserve one job for every \$25,000 loaned.

(2) The department shall notify the area loan organization and applicant of its decision.

(d) Approvals.--For applications which are approved, the department shall draw an advance equal to the principal amount of the loan from the fund. The advance shall be forwarded to the

area loan organization and, upon receipt by the area loan organization, shall become an obligation of the area loan organization. Prior to providing loan funds to the applicant, the area loan organization shall require the applicant to execute a note and to enter into a loan agreement. In addition to the requirements of subsection (e), the loan agreement shall include a provision requiring the recipient to use the loan proceeds to pay the costs of the capital development project. The department may require the area loan organization to impose other terms and conditions on the recipient if the department determines that they are in the best interests of this Commonwealth, including a provision requiring collateral for any penalty imposed under subsection (g).

(e) Loan terms.--A loan agreement entered into in accordance with subsection (c) shall do all of the following:

(1) State the collateral securing the loan. All loans shall be secured by lien positions on collateral at the highest level of priority as may be determined by the area loan organization with the approval of the department.

(2) State the repayment period in accordance with the following:

(i) A loan for real property shall have a repayment period of up to 15 years.

(ii) A loan for machinery and equipment shall have a repayment period of up to ten years.

(iii) A loan for working capital shall have a repayment period of up to three years.

(iv) If, in a capital development project, there are two or more uses planned, the loan terms may be blended.

(3) State the interest rate in accordance with the following:

(i) Except as provided in subparagraph (ii), loans shall be made at an interest rate not to exceed 5% for the term of the loan.

(ii) A loan to a small business which is an agricultural producer shall be made at an interest rate of not less than 2% for the term of the loan if all of the following apply:

(A) A declaration under 35 Pa.C.S. 7301(c) (relating to general authority of Governor) is in effect for at least ten days prior to the date of application.

(B) The application is made within nine months of termination of the declaration.

(C) The agricultural producer is in the area which has been declared to be a natural disaster area.

(f) Loan administration.--A loan made under this section shall be administered in accordance with departmental policies and procedures by the area loan organization which made the loan. Each area loan organization shall submit an annual report on the form required by the department and which includes or demonstrates all of the following:

(1) Each outstanding loan.

(2) The date approved.

(3) The original principal amount.

(4) The current principal balance.

(5) The interest rate.

(6) The purpose for which the loan was made.

(7) An enumeration of any problems or issues which have arisen with regard to each loan.

(8) A statement regarding the progress of the small business in creating or preserving its requisite number of employment opportunities.

(9) Any other information or documentation required by the department.

(g) Penalty.--

(1) Except as provided in paragraph (2), the department shall impose a penalty upon a recipient if the recipient fails to create or preserve the number of employment opportunities specified in its approved application.

(2) The department may waive the penalty required by paragraph (1) if the department determines that the failure was due to circumstances outside the control of the recipient.

(3) The amount of the penalty imposed under paragraph (1) shall be equal to an increase in the interest rate to 2% greater than the current prime interest rate for the remainder of the loan.

(h) Defaults.--The department may by foreclosure take title to a capital development project which it financed if acquisition is necessary to protect a loan made under this section. The department shall pay all costs arising out of the foreclosure and acquisition from moneys held in the fund. The department may, in order to minimize financial losses and sustain employment, lease the capital development project. The department may withdraw moneys from the fund to purchase first mortgages and to make payments on first mortgages on any capital development project which it financed where purchase or payment is necessary to protect a loan made under this section. The department may sell, transfer, convey and assign the first mortgages and shall deposit any moneys derived from the sale of any first mortgages in the fund.

2307. EDA loans.

(a) Application and administration procedures.--The department shall establish application and administration procedures to be used for EDA loans. The procedures shall be established by guidelines and shall conform in all respects to those procedures required or established by the Economic Development Administration for use of Federal funds under the Public Works and Economic Development Act of 1965 (Public Law 89-136, 42 U.S.C. 3121 et seq.).

(b) Eligibility for EDA loans.--The department shall establish eligibility requirements to be used for EDA loans. The requirements shall be established by guidelines and shall conform in all respects to those procedures required or established by the Economic Development Administration for use of Federal funds under the Public Works and Economic Development Act of 1965.

2308. Loans in distressed communities.

(a) Application.--A small business located in a distressed community may submit an application and any applicable application fee to a community development institution requesting a loan for certain costs of a capital development project. The application shall be on the form required by the department and shall include or demonstrate all of the following:

(1) The name and address of the applicant.

(2) A statement that the small business is engaged in business-to-public service or in the mercantile, commercial or point-of-sale retail business sectors.

(3) A statement of the amount of loan assistance sought.

(4) A statement of the capital development project, including a detailed statement of the cost of the project.

(5) A financial commitment from a responsible source for the cost of the capital development project in excess of the amount requested.

(6) Any other information required by the department.

(b) Community development institution review.--

(1) Upon receipt of a completed application, a community development institution shall investigate and determine all of the following:

(i) If the applicant is a small business which is engaged in business-to-public service or in the mercantile, commercial or point-of-sale retail business sectors in accordance with conditions or criteria established by the department.

(ii) If the project is a capital development project.

(iii) If the applicant has demonstrated a direct impact on the community in which the capital development project is or will be located, on residents of that community or on the local and/or regional economy. The department shall establish criteria that will assist in making this demonstration.

(iv) Number of employment opportunities to be created or preserved by the proposed capital development project.

(v) If the applicant complied with all other criteria established by the department.

(2) Upon being satisfied that all requirements have been met, the community development institution shall recommend the applicant to the department and forward the application with all supporting documentation to the department for its review and approval.

(c) Department review.--

(1) Upon receipt of a recommendation and a completed application, the department shall investigate and determine all of the following:

(i) The ability of the applicant to meet and satisfy the debt service as it becomes due and payable. In reviewing repayment obligations, loans shall not be approved on the basis of direct financial return on investment and shall not be held to the loan loss standards of private commercial lenders. Loans shall be reviewed for the purpose of establishing a strong economic base and promoting entrepreneurial activity within the distressed community.

(ii) The existence and sufficiency of collateral for the loan.

(iii) Relevant criminal and credit history and ratings of the applicant as determined from outside credit reporting services and other sources.

(2) If the department is satisfied that all requirements have been met, the department may approve the loan request in an amount not to exceed \$200,000 or 50% of the total capital development project costs, whichever is less. For the purpose

of this paragraph, capital development project costs, except the costs related to working capital, incurred during the 12-month period prior to the date of submission of the application to the department shall be considered part of the total capital development project costs.

(3) The department shall notify the community development institution and applicant of its decision.

(d) Approvals.--For applications which are approved, the department shall draw an advance equal to the principal amount of the loan from the fund and, prior to providing loan funds to the applicant, the department shall require the applicant to execute a note and to enter into a loan agreement. In addition to the requirements of subsection (e), the loan agreement shall include a provision requiring the recipient to use the loan proceeds to pay the costs of the capital development project. The department may impose other terms and conditions on the recipient if the department determines they are in the best interests of this Commonwealth, including a provision requiring collateral for any penalty imposed under subsection (g).

(e) Loan terms.--A loan agreement entered into in accordance with subsection (d) shall do all of the following:

(1) State any collateral securing the loan. The department may use its best judgment to identify and secure collateral.

(2) State the repayment period which may be flexible.

(3) State the interest rate which may not be less than 2% nor more than 5% for the term of the loan.

(4) State that the recipient agrees to maintain, at a minimum, the number of jobs in existence as of the date of loan application.

(f) Loan administration.--A loan made under this section shall be administered in accordance with departmental policies and procedures.

(g) Penalty.--

(1) Except as provided in paragraph (2), the department shall impose a penalty upon a recipient if the recipient fails to preserve the number of employment opportunities specified in its approved application.

(2) The department may waive the penalty required by paragraph (1) if the department determines that the failure was due to circumstances outside the control of the recipient.

(3) The amount of any penalty imposed under paragraph (1) shall be equal to an increase in the interest rate to 2% greater than the current prime interest rate for the remainder of the loan.

(h) Defaults.--The department may take title by foreclosure to a capital development project which it financed where acquisition is necessary to protect a loan made under this section. The department shall pay all costs arising out of the foreclosure and acquisition from money held in the fund. The department may, in order to minimize financial losses and sustain employment, lease the capital development project. The department may withdraw money from the fund to purchase first mortgages and to make payments on first mortgages on any capital development project which it financed if purchase or payment is necessary to protect a loan made under this section. The department may sell, transfer, convey and assign the first mortgages and shall deposit in the fund money derived from the

sale of any first mortgages.

Cross References. Section 2308 is referred to in section 2302 of this title.

2309. Pollution prevention assistance loans.

(a) Application.--A small business may submit an application and any application fee to a pollution prevention assistance agency requesting a loan for a pollution prevention infrastructure. The application shall be on the form required by the department and shall include or demonstrate all of the following:

(1) The name and address of the applicant.

(2) A statement of the amount of loan assistance sought.

(3) A statement of the pollution prevention infrastructure, including a detailed statement of the cost of the infrastructure.

(4) A financial commitment from a responsible source for the cost of the pollution prevention infrastructure in excess of the amount requested.

(5) Any other information required by the department.

(b) Pollution prevention assistance agency review.--

(1) Upon receipt of a completed application, a pollution prevention assistance agency shall investigate and determine all of the following:

(i) If the applicant is a small business.

(ii) If the project is for pollution prevention infrastructure.

(iii) If the applicant complied with all other criteria established by the department.

(2) Upon being satisfied that all requirements have been met, the pollution prevention assistance agency shall recommend the applicant to the department and forward the application with all supporting documentation to the department for its review and approval.

(c) Department review.--

(1) Upon receipt of a recommendation and a completed application, the department shall investigate and determine all of the following:

(i) If the pollution prevention infrastructure demonstrates a substantial likelihood of preventing or reducing pollution. The Department of Environmental Protection shall assist the department in reviewing the applications and provide technical assistance.

(ii) The ability of the applicant to meet and satisfy the debt service as it becomes due and payable. In reviewing repayment obligations, loans shall not be approved on the basis of direct financial return on investment and shall not be held to the loan loss standards of private commercial lenders. Loans shall be reviewed for the purpose of reducing pollution through source reduction technologies or processes.

(iii) The existence and sufficiency of collateral for the loan.

(iv) Relevant criminal and credit history and ratings of the applicant as determined from outside credit reporting services and other sources.

(2) If the department is satisfied that all requirements have been met, the department may approve the loan request. A loan approved under this subsection may not exceed the lesser

of:

- (i) \$100,000; or
- (ii) 75% of infrastructure costs.

(3) The department shall notify the pollution prevention assistance agency and applicant of its decision.

(d) Approvals.--For applications which are approved, the department shall draw an advance equal to the principal amount of the loan from the Pollution Prevention Assistance Account. Prior to providing loan funds to the applicant, the department shall require the applicant to execute a note and to enter into a loan agreement. In addition to the requirements of subsection (e), the loan agreement shall include a provision requiring the recipient to use the loan proceeds to pay the costs of the pollution prevention infrastructure. The department may impose other terms and conditions on the recipient if the department determines they are in the best interests of this Commonwealth, including a provision requiring collateral for any penalty imposed under subsection (g).

(e) Loan terms.--A loan agreement entered into in accordance with subsection (d) shall do all of the following:

(1) State the collateral securing the loan. All loans shall be secured by lien positions on collateral at the highest level of priority as may be determined by the department.

(2) State the repayment period which may not exceed 10 years.

(3) State that the interest rate is 2%.

(4) State that any loan fee is not to exceed 5% of the loan amount.

(f) Loan administration.--A loan made under this section shall be administered in accordance with departmental policies and procedures.

(g) Penalty.--

(1) Except as provided in paragraph (2), the department shall impose a penalty upon a recipient if the recipient fails to carry out the pollution prevention infrastructure project as specified in its approved application.

(2) The department may waive the penalty required by paragraph (1) if the department determines that the failure was due to circumstances outside the control of the recipient.

(3) The amount of any penalty imposed under paragraph (1) shall be equal to an increase in the interest rate to 2% greater than the current prime interest rate for the remainder of the loan.

(h) Defaults.--The department may take title by foreclosure to a pollution prevention infrastructure which it financed if acquisition is necessary to protect a loan made under this section. The department shall pay all costs arising out of the foreclosure and acquisition from money held in the Pollution Prevention Assistance Account. The department may, in order to minimize financial losses and sustain employment, lease the pollution prevention infrastructure. The department may withdraw money from the Pollution Prevention Assistance Account to purchase first mortgages and to make payments on first mortgages on any pollution prevention infrastructure which it financed if the purchase or payment is necessary to protect a loan made under this section. The department may sell, transfer, convey and assign the first mortgages and shall deposit any money

derived from the sale of any first mortgages in the Pollution Prevention Assistance Account.

Cross References. Section 2309 is referred to in section 2304 of this title.

2310. Export financing loans.

(a) Application.--A person may submit an application and any applicable application fee to the department or its area loan organization requesting a loan for certain costs of a capital development project which will be used in export activities. The application must be on the form required by the department and must include or demonstrate all of the following:

- (1) The name and address of the applicant.
- (2) A statement of the amount of loan assistance sought.
- (3) A statement of the capital development project, including a detailed statement of the cost of the project.
- (4) A financial commitment from a responsible source for any cost of the capital development project in excess of the amount requested.
- (5) A statement that the loan, if approved, would not supplant funding from private sector sources on commercially reasonable terms.
- (6) Any other information required by the department.

(b) Review.--Upon receipt of a completed application, the department shall investigate and determine all of the following:

- (1) If the applicant is an export business.
- (2) If the project is a capital development project.
- (3) The ability of the applicant to meet and satisfy the debt service as it becomes due and payable.
- (4) The existence and sufficiency of collateral for the loan.
- (5) Relevant criminal and credit history and ratings of the applicant as determined from outside credit reporting services and other sources.
- (6) Number of employment opportunities to be created or preserved by the proposed capital development project.
- (7) If the applicant complied with all other criteria established by the department.

(c) Approvals.--If the department is satisfied that all requirements have been met, the department may approve the loan request. A loan approved under this section may not exceed \$350,000. The department shall notify the applicant and, if applicable, the area loan organization of its decision. The department shall reserve an amount equal to the principal amount of the loan within the fund or the special account authorized by section 2304(c)(2) (relating to fund and accounts). Prior to providing funds to the applicant, the department shall require the applicant to execute a note and enter into a loan agreement. In addition to the requirements of subsection (d), the loan agreement shall include a provision requiring the recipient to use the loan proceeds to pay the costs of the capital development project. The department may impose other terms and conditions on the recipient if the department determines they are in the best interests of this Commonwealth, including any of the following:

- (1) A provision requiring collateral for any penalty imposed under subsection (f).
- (2) A provision requiring the person to be eligible for an insurance policy.

(3) A provision requiring the loan to be guaranteed by the Working Capital Guaranty Program offered by the Ex-Im Bank.

(4) A provision requiring an export credit sales contract insured by an insurance policy.

(d) Loan terms.--A loan agreement entered into in accordance with subsection (c) shall do all of the following:

(1) State the collateral securing the loan. All loans shall be secured by lien positions on collateral at the highest level of priority as may be determined by the department.

(2) State the repayment period as determined by the department.

(3) State the interest rate as determined by the department.

(e) Loan administration.--A loan made under this section shall be administered in accordance with departmental policies and procedures.

(f) Penalty.--

(1) Except as provided in paragraph (2), the department shall impose a penalty upon a recipient if the recipient fails to carry out the export activities specified in its approved application.

(2) The department may waive the penalty required by paragraph (1) if the department determines that the failure was due to circumstances outside the control of the recipient.

(3) The amount of the penalty imposed under paragraph (1) shall be equal to an increase in the interest rate to 2% greater than the current prime interest rate for the remainder of the loan.

(g) Defaults.--The department may, by foreclosure, take title to a capital development project which it financed if acquisition is necessary to protect a loan made under this section. The department shall pay all costs arising out of the foreclosure and acquisition from money held in the fund or a special account authorized by section 2304(c)(2). The department may, in order to minimize financial losses and sustain employment, lease the capital development project. The department may withdraw money from the fund or a special account authorized by section 2304(c)(2) to purchase first mortgages and to make payments on first mortgages on any capital development project which it financed if purchase or payment is necessary to protect a loan made under this section. The department may sell, transfer, convey and assign the first mortgages and shall deposit any money derived from the sale of any first mortgages in the fund or a special account authorized by section 2304(c)(2).

2311. Reporting and inspection.

(a) Inspection.--An applicant or a recipient shall, upon request, permit authorized employees of the department or its agent to inspect the plant, books and records of the applicant or recipient.

(b) Updating.--An applicant or a recipient shall provide updated information to the department and its agents if conditions change or to the extent that the information originally given becomes inaccurate or misleading.

(c) Periodic reports.--A recipient shall provide the department and its agents with such periodic financial reports

as the department may require until the loan is repaid in full.

(d) Financial and performance audits.--An agent of the department shall annually submit to the department, at the agent's expense, an independent financial audit. If the audit reveals misconduct of a material nature on the part of the agent, the department shall take appropriate action.

2312. Limitations.

No loans shall be recommended or approved if the proceeds of the loan could do any of the following:

(1) Cause, aid or assist directly in the relocation of any business operations from one part of this Commonwealth to another unless there is at least a 25% net increase in employment.

(2) Refinance any portion of the total cost of a capital development project, pollution prevention infrastructure or other existing loans or debt.

(3) Finance a capital development project or pollution prevention infrastructure located outside the geographic boundaries of this Commonwealth.

(4) Provide funds, directly or indirectly, for payment distribution or as loan owners, partners or shareholders of a small business, except as ordinary compensation for services rendered.

(5) Provide funds for speculation in real or personal property, whether tangible or intangible.

CHAPTER 25
INDUSTRIAL DEVELOPMENT ASSISTANCE
(Reserved)

Enactment. Chapter 25 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

CHAPTER 27
CUSTOMIZED JOB TRAINING
(Reserved)

Enactment. Chapter 27 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

CHAPTER 29
MACHINERY AND EQUIPMENT LOANS

Sec.

- 2901. Scope.
- 2902. Definitions.
- 2903. Establishment.
- 2904. Machinery and Equipment Loan Fund.
- 2905. Eligibility for loans; terms and conditions.
- 2906. Application and administration.
- 2907. Powers of secretary.
- 2908. Reporting and inspection.
- 2909. Nondiscrimination.
- 2910. Conflict of interest.
- 2911. Reports to General Assembly.
- 2912. Guidelines.

Enactment. Chapter 29 was added February 12, 2004, P.L.99, No.12, effective immediately unless otherwise noted.

Special Provisions in Appendix. See section 4(5) of Act 12 of 2004 in the appendix to this title for special provisions relating to continuation of prior law.

Cross References. Chapter 29 is referred to in sections 1513, 1543, 1544, 1552 of Title 64 (Public Authorities and Quasi-Public Corporations).

2901. Scope.

This chapter relates to the Machinery and Equipment Loan Program.

Effective Date. Section 6(1)(i) of Act 12 of 2004 provided that section 2901 shall take effect upon publication of the guidelines required by section 2912.

2902. Definitions.

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

"Business enterprise." A for-profit corporation, partnership or proprietorship. The term includes a medical facility.

"Farm commodity." Any Pennsylvania-grown agricultural, horticultural, aquacultural, vegetable, fruit and floricultural product of the soil, livestock and meats, wools, hides, furs, poultry, eggs, dairy products, nuts, mushrooms, honey products and forest products.

"Fund." The Machinery and Equipment Loan Fund created and established by this chapter.

"Medical facility." An entity licensed as a hospital under the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, or the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

"Normal agricultural operation." The term shall have the same meaning as given to it in section 2 of the act of June 10, 1982 (P.L.454, No.133), entitled "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances."

"Production agriculture." The management and use of a normal agricultural operation for the production of a farm commodity.

Effective Date. Section 6(1)(i) of Act 12 of 2004 provided that section 2902 shall take effect upon publication of the guidelines required by section 2912.

2903. Establishment.

There is established within the department a program to be known as the Machinery and Equipment Loan Program. The program shall be administered by the department and provide loans to business enterprises for machinery and equipment.

Effective Date. Section 6(1)(i) of Act 12 of 2004 provided that section 2903 shall take effect upon publication of the guidelines required by section 2912.

2904. Machinery and Equipment Loan Fund.

(a) Creation.--There is created a special account in the Treasury Department, to be known as the Machinery and Equipment Loan Fund, to which shall be credited all program appropriations made by the General Assembly, all proceeds from loan repayments and any and all other deposits, payments or contributions from any other source made available to the fund. The fund shall

operate as a revolving fund whereby all appropriations, payments and interest made thereto may be applied and reapplied to the purposes of this chapter.

(b) Credits to fund.--All appropriations, deposits and contributions made to the fund shall be immediately credited in full to the fund, and earnings on the moneys held in the fund shall also be credited to the fund for the purposes of this chapter.

Effective Date. Section 6(1)(i) of Act 12 of 2004 provided that section 2904 shall take effect upon publication of the guidelines required by section 2912.

Cross References. Section 2904 is referred to in section 1544 of Title 64 (Public Authorities and Quasi-Public Corporations).

2905. Eligibility for loans; terms and conditions.

(a) Loans; general rules.--The secretary may make advances from the fund, subject to the terms, conditions and restrictions provided under this chapter, for the purpose of making loans to business enterprises involved in industrial processes, mining, manufacturing, production agriculture, information technology, biotechnology, service as a medical facility or other industrial or technology sectors, as defined by the department, to acquire and install new machinery and equipment or upgrade existing machinery and equipment, including the acquisition, application and utilization of computer hardware and software.

(1) All loans shall be subject to all of the following conditions:

(i) Be made to eligible business enterprises under the provisions of this chapter.

(ii) Have a maximum loan ceiling of \$5,000,000 or 50% of the cost of the project, whichever is less.

(iii) Be limited to the purchase and installation of new equipment and machinery or the upgrade of existing machinery and equipment. This subparagraph includes the acquisition, application and utilization of computer hardware and software.

(iv) Be limited to projects that demonstrate the creation or retention of one job for every \$25,000 received from the fund. This subparagraph does not apply to loans made to business enterprises involved in production agriculture or to loans made to medical facilities.

(v) Have an interest rate which shall be established by the secretary.

(vi) Have a term of not in excess of ten years.

(2) For loans to medical facilities, loan funds may be used only to finance the acquisition, installation and utilization of machinery and equipment, including computer hardware and software components, to be used in the prescribing and dispensing of medication for medical facility patients.

(b) Restrictions.--No loans shall be made that do any of the following:

(1) Cause, aid or assist in, directly or indirectly, the relocation of any business enterprise from one part of this Commonwealth to another unless there is at least a 25% increase in net employment.

(2) Supplant funding that is otherwise available

expeditiously from private sector sources on commercially reasonable terms.

(3) Be for the purpose of refinancing any portion of the total project cost or other existing loans or debt.

(4) Be for the purpose of financing projects located outside the geographic boundaries of this Commonwealth.

(5) Be for the purpose of paying off a creditor that is inadequately secured and is in a position to sustain a loss.

(6) Be for the purpose of repaying a debt owed to a small business investment company.

(7) Provide funds for speculation in any kind of property, real or personal, tangible or intangible.

(c) Security.--All loans shall be secured by no less than a second lien position on the equipment purchased and other sufficient collateral as determined by the secretary.

Effective Date. Section 6(1)(i) of Act 12 of 2004 provided that section 2905 shall take effect upon publication of the guidelines required by section 2912.

2906. Application and administration.

(a) Procedures.--Application and administration procedures for fund loans shall be established by the secretary.

(b) Receipt.--The secretary shall receive applications from eligible business enterprises for machinery and equipment loans. Applications shall be made to the secretary in the form and manner as the department may require.

(c) Investigation.--Upon receipt of the application, the secretary shall investigate and review the application and either approve or disapprove the loan application by proper action of the department. The decision of the secretary shall be based, in whole or in part, upon the following criteria:

(1) Ability of the applicant to meet and satisfy all debt service as it becomes due and payable.

(2) Sufficiency of available collateral, including satisfactory lien positions on real and personal property.

(3) Eligibility of the applicant as a business enterprise involved in industrial processes, manufacturing, mining, production agriculture, information technology, biotechnology, services as a medical facility or other industrial or technology sectors as defined by the secretary.

(4) Sufficient evidence that funds shall be used only to acquire and install new equipment and machinery or upgrade existing equipment and machinery, including the acquisition, application and utilization of computer hardware and software.

(5) Capital needs of the applicant.

(6) Conformity of the project to the provisions of this chapter.

(7) Relevant criminal and credit history and ratings of applicant as determined from outside credit reporting services and other sources.

(8) Number of net employment opportunities created and retained by the proposed project. This paragraph does not apply to business enterprises involved in production agriculture or medical facilities.

(9) Supporting evidence that the loan project will increase the firm's competitiveness and value added within its respective industry.

(10) Explanation of how the loan will aid the

Commonwealth in its efforts to assist business enterprises to increase their productivity and improve the future competitive position of this Commonwealth's industries.

(11) Compliance with the loan amount limitations provided for machinery and equipment loans.

(12) Payment to date of all tax obligations due and owing to the Commonwealth or any political subdivision thereof.

(13) Conformity of all aspects of the loan transaction with the substantive and procedural provisions of this chapter and regulations promulgated hereunder.

(14) Such information and documentation as the secretary shall require.

(d) Notification.--The secretary shall notify the applicant of final approval or disapproval of the loan application within a reasonable period of time following the receipt of the application. In the case of approval of a loan application, the secretary shall arrange to draw the loan amount from the fund and advance the sum to the recipient. The advance shall be made available in the form of a loan transaction, which loan shall be evidenced by a note executed by the recipient and secured in a manner as the secretary shall require in conformity in all respects to the loan as approved by the secretary.

(e) Policy requirements and report.--All loans shall be administered and monitored by the department in accordance with the policies and procedures prescribed by the secretary. On or before September 1 of each year, the secretary shall prepare a report that includes the following:

(1) Each outstanding loan.

(2) The date of approval.

(3) The original principal balance.

(4) The current principal balance.

(5) The interest rate.

(6) The purpose for which the loan was made.

(7) An enumeration of any problems or issues which have arisen with regard to each loan.

(8) A statement regarding the progress of the business enterprise in creating and retaining its requisite number of employment opportunities.

(9) Such other information and documentation as the secretary shall require.

(f) Penalty for noncompliance.--In the event that a loan recipient shall not comply with its approved application by failing to create or preserve the number of employment opportunities specified in its approved application, the secretary shall impose a penalty equal to an increase in the interest rate to 2% greater than the current prime interest rate for the remainder of the loan unless the penalty is waived by the secretary because the failure is due to circumstances outside the control of the loan recipient. The penalty shall be payable in installments that the secretary deems appropriate.

Effective Date. Section 6(1)(i) of Act 12 of 2004 provided that section 2906 shall take effect upon publication of the guidelines required by section 2912.

Cross References. Section 2906 is referred to in section 2911 of this title.

2907. Powers of secretary.

The secretary shall have and may exercise all powers and

authority necessary to the proper administration and implementation of this chapter and shall have the authority to adopt policies, procedures and guidelines and promulgate rules and regulations necessary to effectuate the provisions of this chapter.

Effective Date. Section 6(1)(i) of Act 12 of 2004 provided that section 2907 shall take effect upon publication of the guidelines required by section 2912.

2908. Reporting and inspection.

(a) Inspection.--Each business enterprise which applies for or receives assistance under this chapter, upon reasonable request of the department, shall permit duly authorized employees of the department to inspect the plant, books and records of the business enterprise.

(b) Updating.--Each business enterprise shall update the information given to the department in its application if conditions change or to the extent that the information given originally becomes inaccurate or misleading.

(c) Periodic reports.--Each recipient of assistance under this chapter shall provide the department with periodic financial reports as the secretary may require until such time as the loan is paid off.

Effective Date. Section 6(1)(i) of Act 12 of 2004 provided that section 2908 shall take effect upon publication of the guidelines required by section 2912.

2909. Nondiscrimination.

No loan shall be made to a business enterprise unless the business enterprise certifies to the department, in a form satisfactory to the department, that it shall not discriminate against any employee or any applicant for employment because of race, religion, color, national origin, sex or age. The business enterprise shall also certify to the department that it is not currently under citation for pollution violations and that in the future it will meet all applicable antipollution standards.

Effective Date. Section 6(1)(i) of Act 12 of 2004 provided that section 2909 shall take effect upon publication of the guidelines required by section 2912.

2910. Conflict of interest.

No employee of the department shall, either directly or indirectly, be a party to or have any financial interest in any contract or agreement arising pursuant to this chapter.

Effective Date. Section 6(1)(i) of Act 12 of 2004 provided that section 2910 shall take effect upon publication of the guidelines required by section 2912.

2911. Reports to General Assembly.

(a) Annual reports.--On or before September 1 of each year, the secretary shall provide a report to the Secretary of the Senate and to the Chief Clerk of the House of Representatives. The report shall describe all relevant activities of the department pursuant to this chapter and shall include the following:

(1) List of business enterprises receiving loans from the fund and the amounts and terms of this assistance.

(2) Loan amounts repaid. Information under this paragraph may be reported in the aggregate.

(3) Loans outstanding, balances due and any penalties imposed. Information under this paragraph may be reported in the aggregate.

(4) Jobs created by businesses receiving funds in previous years. Information under this paragraph may be reported in the aggregate.

(5) Other relevant information as determined by the secretary.

(b) Availability of departmental reports.--Reports prepared by the secretary under section 2906(e) (relating to application and administration) shall be made available upon request to members of the General Assembly.

Effective Date. Section 6(1)(i) of Act 12 of 2004 provided that section 2911 shall take effect upon publication of the guidelines required by section 2912.

2912. Guidelines.

The department shall develop written guidelines for the implementation of this chapter.

CHAPTER 31
FAMILY SAVINGS ACCOUNT
(Reserved)

Enactment. Chapter 31 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

CHAPTER 33
ECONOMIC ENHANCEMENT
(Reserved)

Enactment. Chapter 33 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

CHAPTER 34
INFRASTRUCTURE AND FACILITIES IMPROVEMENT PROGRAM

Sec.

3401. Scope of chapter.

3402. Definitions.

3403. Establishment.

3404. Application.

3405. Review.

3406. Approval.

Enactment. Chapter 34 was added April 1, 2004, P.L.200, No.23, effective July 1, 2004.

3401. Scope of chapter.

This chapter relates to the Infrastructure and Facilities Improvement Program.

3402. Definitions.

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

"Applicant." An issuing authority which applies for financial assistance under section 3404 (relating to

application).

"Convention center." Interests in land, improvement, structure, buildings or part of a building, whether owned by, leased by or to or otherwise acquired by an authority, which are appropriate for large public assemblies, the holding of conventions, conferences, trade exhibitions and other business, social, cultural, scientific and public interest events.

"Convention center authority." An entity created under any of the following:

(1) Article XXV-A of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

(2) Article XXIII(n) and (o) of the act of August 9, 1955 (P.L.323, No.130), known as The County Code.

(3) 53 Pa.C.S. Ch. 56 (relating to municipal authorities) or the former act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, for purposes related to convention centers.

(4) 64 Pa.C.S. Ch. 60 (relating to Pennsylvania Convention Center authority).

"Cost of a project." Any of the following expenses incurred for a project:

(1) Expenses for the acquisition, construction, reconstruction, expansion, extension, demolition, improvement, rehabilitation or remodeling of interests in land, buildings, structures, improvements or infrastructure, which are part of the project.

(2) Expenses for the remediation of existing environmental hazards on land where the project is or will be located.

(3) Financing charges and other costs and expenses incurred in financing and issuing bonds for the project.

(4) Costs and expenses of administrative expenses and professional services, including the costs of engineering, financial services, accounting and legal services, rendered in completing the project.

(5) Costs and expenses associated with the preparation of plans, specifications, studies and surveys, necessary or incidental to determining the feasibility or practicability of constructing the project.

"Department." The Department of Community and Economic Development of the Commonwealth.

"Hospital." A facility operated by an entity licensed as a hospital under the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, or the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, which is used to provide inpatient care and services.

"Hotel establishment." A hotel which is associated with a convention center.

"Industrial enterprise." An enterprise, other than a mercantile, commercial or retail enterprise, which by virtue of its size requires substantial capital and will create significant employment opportunities.

"Infrastructure." Any of the following:

(1) Drainage and storm water systems.

(2) Energy facilities which distribute electric power.

(3) Wastewater systems.

(4) Transportation facilities. The term includes roads, parking facilities, sidewalks, bridges, rails, ports, waterways and airports.

(5) Pipelines for transporting natural gas.

(6) Facilities for the transmission of information. The term includes telecommunication and cable.

(7) Water supply facilities.

(8) Interests in land to construct a facility, pipeline or system listed in paragraphs (1) through (7).

(9) Engineering, design and inspection costs associated with the construction of a facility, pipeline or system listed in paragraphs (1) through (7).

"Issuing authority." Any of the following:

(1) An authority created under the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law.

(2) An authority created under Article XXV-A of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

(3) Article XXIII(n) and (o) of the act of August 9, 1955 (P.L.323, No.130), known as The County Code.

(4) The Pennsylvania Economic Development Financing Authority or an authority established under section 4 of the act of August 23, 1967 (P.L.251, No.102), known as the Economic Development Financing Law.

(5) An issuing authority as defined in section 3 of the act of July 11, 1990 (P.L.465, No.113), known as the Tax Increment Financing Act.

(6) An authority created under 53 Pa.C.S. Ch. 56 (relating to municipal authorities) or the former act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, for purposes related to convention centers.

(7) An authority created and continued under 64 Pa.C.S. Ch. 60 (relating to Pennsylvania Convention Center Authority).

"Manufacturer." An entity which is engaged in the giving of new shapes, new qualities or new combinations to matter by the application of skill and labor.

"Project." As follows:

(1) If the project user is an industrial enterprise or retail enterprise:

(i) Infrastructure.

(ii) Remediation of environmental hazards which were not caused or contributed to by the applicant or the project user.

(2) If the project user is a research and development enterprise, manufacturer, hospital, convention center or hotel establishment:

(i) Infrastructure.

(ii) Remediation of environmental hazards which were not caused or contributed to by the applicant or the project user.

(iii) Interests in land, buildings, structure or improvements required by the project user.

"Project user." An industrial enterprise, retail enterprise, research and development enterprise, manufacturer, hospital, convention center or hotel establishment, which owns, leases or uses all or any part of a project.

"Research and development enterprise." A for-profit business engaged in the discovery of new and the refinement of known substances, processes, products, theories and ideas.

"Retail enterprise." An entity or entities engaged in retail

sales which created or will create at least 200 full-time jobs and occupies or will occupy at least a 200,000-square-foot facility.

"Secretary." The Secretary of Community and Economic Development of the Commonwealth.

"Year." The fiscal year of the Commonwealth.
(Nov. 30, 2004, P.L.1708, No.218, eff. imd.)

2004 Amendment. Act 218 amended the defs. of "project," "project user" and "retail enterprise" and added the def. of "research and development enterprise."

3403. Establishment.

There is established within the department a program to be known as the Infrastructure and Facilities Improvement Program. The program shall enhance the economic development of the Commonwealth by providing financial assistance in the form of multiyear grants to issuing authorities toward payment of debt service on projects.

3404. Application.

An issuing authority may submit an application to the department requesting financial assistance for a project. The application must be on a form required by the department and must include all of the following:

- (1) The name and address of the applicant.
- (2) The name, address and state tax identification numbers of the project user.
- (3) A description of the project. The description shall include all of the following:
 - (i) A detailed narrative describing the project and the project user.
 - (ii) A detailed statement of the cost of the project. The statement must include the amount and type of debt to be issued by the applicant for the project, the identity of the party responsible for repayment of the debt and the collateral or security to be provided.
 - (iii) A statement of the number of net new full-time jobs to be created by the project and the number of existing full-time jobs to be preserved by the project.
- (4) A statement of the amount of grant funds being requested per year.
- (5) A statement of the number of years a grant is being requested. If the applicant is requesting a grant for a project of a project user that is an industrial enterprise, retail enterprise, a research and development enterprise or a manufacturer, the request may not exceed ten years. If the applicant is requesting a grant for a project of a project user that is a hospital, convention center or hotel establishment, the request may not exceed 20 years.
- (6) Financial information from the project user prepared or reported on by an independent certified public accountant projecting for the next three years all of the following:
 - (i) The sales or expected sales tax collected or to be collected by the project user from activities as a result of the project.
 - (ii) The expected hotel occupancy tax to be collected by the project user from activities as a result of the project.
 - (iii) The expected net increase in personal income tax withheld by the project user as an employer pursuant

to Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, from activities as a result of the project.

(7) Evidence of a firm commitment from the project user to use the project upon completion.

(8) (Deleted by amendment).

(9) Any other information required by the department.

(Nov. 30, 2004, P.L.1708, No.218, eff. imd.)

2004 Amendment. Act 218 amended par. (5) and deleted par. (8).

Cross References. Section 3404 is referred to in section 3402 of this title.

3405. Review.

(a) Project review.--Upon receiving a completed application, the department shall review the application to determine all of the following:

(1) That the cost of the project is reasonable.

(2) The number of net new full-time jobs created or to be created by the project and the number of existing full-time jobs to be preserved by the project.

(3) That a firm commitment from the project user to use the project upon completion exists.

(4) That the financing for the project identifies a party other than the Commonwealth that will be responsible for repayment of the debt.

(5) That the applicant submitted satisfactory financial information from the project user prepared or reported on by an independent certified public accountant.

(6) That the financing for the project does not pledge the full faith and credit of the Commonwealth.

(7) (Deleted by amendment).

(8) If the project was completed prior to the effective date of this section, that the project user is a retail enterprise.

(9) That the applicant and the project user complied with all other criteria established by the department.

(b) Financial review.--

(1) Upon being satisfied that all requirements have been met, the department shall forward the application to the Office of the Budget and the Department of Revenue. The office, in conjunction with the Department of Revenue, shall review the application. Notwithstanding the provisions of section 353(f) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, the Department of Revenue may supply the department and the office with information concerning taxes owed or paid by a project user or for which a project user may otherwise be liable or with any other aspect of an applicant's tax liability. The office, in conjunction with the Department of Revenue, shall evaluate all of the following:

(i) The sales tax collected or expected to be collected by the project user pursuant to Article II of the Tax Reform Code of 1971 from activities as a result of the project.

(ii) The hotel occupancy tax to be collected by the project user pursuant to Article II of the Tax Reform Code of 1971 from activities as a result of the project.

(iii) The expected net increase in personal income

tax withheld by the project user as an employer pursuant to Article III of the Tax Reform Code of 1971 from activities as a result of the project.

(2) The Office of the Budget may accept, reject or adjust the estimate of the amount of tax remitted or to be remitted to the Commonwealth by the project user from activities resulting from the project.

(Nov. 30, 2004, P.L.1708, No.218, eff. imd.)

2004 Amendment. Act 218 deleted subsec. (a)(7).

Cross References. Section 3405 is referred to in section 3406 of this title.

3406. Approval.

(a) Financial approval.--Upon being satisfied that all requirements have been met, the Secretary of the Budget shall establish a maximum annual amount for the grant and shall notify the department and the Department of Revenue. The annual amount established shall be based upon the review made in section 3405(b) (relating to review) and the annual debt service of the project.

(b) Grant approval.--Upon receipt of the notification required in subsection (a), the department may approve the application and award the applicant a grant in an annual amount not to exceed the amount established by the Secretary of the Budget. Prior to providing grant funds to the applicant, the department shall enter into a contract with the applicant and the project user. The contract shall include provisions which do all of the following:

(1) Specify the base amount of the grant per year.

(2) Specify the total number of years that grant funds may be provided to the applicant and the year in which the grant may commence, including an option to defer commencement of the grant to any date up to the date upon which the project is completed and operations have commenced. If the applicant is an industrial enterprise, a retail enterprise, a research and development enterprise or a manufacturer, the number of years may not exceed ten years. If the applicant is a hospital, convention center or hotel establishment, the number of years may not exceed 20 years.

(3) If the grant will be awarded for more than four years, establish the procedure for the award of the grant after year four. If the department, the Secretary of the Budget and the Department of Revenue determine that the tax revenues specified in section 3405(b) during the fifth year and each succeeding year thereafter are anticipated to be equal to or exceed the amount of the grant awarded during the previous year, the department shall award the grant in the amount of the original grant as determined under this section. If the department, the Secretary of the Budget and the Department of Revenue determine that the tax revenues specified in section 3405(b) during the fifth year and each year thereafter will not equal or exceed the amount of the grant for the previous year, the department shall award a grant that is no less than the anticipated tax revenue specified in section 3405(b) and no more than the amount of the original grant awarded under this section.

(4) Require the applicant to use the grant to pay debt service for the project and to repay all or any portion of a grant if the applicant fails to use the grant to pay debt

service.

(5) Specify that the annual amount of the grant in any one year may not exceed the annual amount of the debt service on the project for that year.

(6) If the grant in any one year exceeds the annual payment on debt service in that year, require the applicant to repay the amount of the grant for that year which exceeds the payment on debt service for that year.

(7) (Deleted by amendment).

(8) Require the project user to pay to the applicant a sum equal to any payments received by the project user from third parties for infrastructure which is part of the project during the period which the applicant is receiving a grant from the department. Any payment received by the applicant under this paragraph must be applied to payment of the debt service for the project.

(9) Require the applicant to satisfactorily demonstrate that the full amount of annual debt service is paid for the project, regardless of the amount of the grant received.

(10) Require the project user to use the project for the period of time the applicant is receiving grants under this chapter and to repay all or any portion of a grant if the project user fails to use the project for the period of time the applicant is receiving grants.

(11) Require the project user to timely pay all Commonwealth and local taxes and fees that are then due and owing. A local government unit as defined under 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) or an issuing authority may enter into an agreement or adopt an ordinance or resolution to permit the local government unit or issuing authority to pay, waive, abate, settle, compromise or reimburse any local tax, fee or other imposition applicable to a project user imposed by any local government unit or issuing authority. The agreement, ordinance or resolution shall not affect the eligibility of an applicant or a project to receive a grant under this chapter.

(12) Require the department to approve any change of use of a project during the period in which the applicant is receiving a grant from the department. The department may not unreasonably withhold its consent to a change of use.

(c) Limitations.--

(1) If sufficient funds are not appropriated to cover the anticipated cost of the grants awarded in any given fiscal year, the department shall prorate payments to issuing authorities.

(2) For grants renewed in accordance with subsection (b)(3), grants may not exceed the incremental growth in revenues realized by the Commonwealth from the tax sources identified in section 3405(b).

(3) Grants may not be used to pay debt service for projects directly related to gaming.

(Nov. 30, 2004, P.L.1708, No.218, eff. imd.; May 11, 2006, P.L.167, No.42, eff. imd.)

2006 Amendment. Act 42 amended subsec. (b). Section 4 of Act 42 provided that the amendment of section 3406 shall apply retroactively to July 1, 2004.

CHAPTER 35
KEYSTONE OPPORTUNITY ZONES
(Reserved)

Enactment. Chapter 35 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

CHAPTER 37
KEYSTONE INNOVATION ZONES

Sec.

- 3701. Scope.
- 3702. Definitions.
- 3703. Program.
- 3704. Assistance.
- 3705. Keystone innovation grants.
- 3706. Keystone innovation zone tax credits.
- 3707. Guidelines.
- 3708. Annual report.

Enactment. Chapter 37 was added February 12, 2004, P.L.99, No.12, effective immediately unless otherwise noted.

3701. Scope.

This chapter relates to the Keystone Innovation Zone Program.

3702. Definitions.

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

"Institution of higher education." A public or private institution within this Commonwealth authorized by the Department of Education to grant an associate degree or higher degree. The term includes branch or satellite campus of the institution.

"Keystone innovation zone." A clearly defined contiguous geographic area comprised of portions of one or more political subdivisions.

"Keystone innovation zone company." A for-profit business entity which is all of the following:

- (1) Located within a keystone innovation zone.
- (2) Has been in operation for less than eight years.
- (3) Falls within one of the targeted industry segments

adopted by the keystone innovation zone partnership in its strategic plan.

"Keystone innovation zone coordinator." A nonprofit organization which is all of the following:

- (1) Not an institution of higher education.
- (2) Chosen by a keystone innovation zone partnership and agreed to by the department to administer the activities of a keystone innovation zone.

"Keystone innovation zone partnership." Any association or group which is all of the following:

(1) Comprised of at least one institution of higher education and a combination of private businesses, business support organizations, commercial lending institutions, venture capital companies, angel investor networks or foundations.

(2) Formed for the creation and administration of a keystone innovation zone.

"KIZ." A keystone innovation zone.

"KIZ company." A keystone innovation zone company.

"KIZ coordinator." A keystone innovation zone coordinator.

"KIZ partnership." A keystone innovation zone partnership.

3703. Program.

(a) Establishment.--There is established a program in the department to be known as the Keystone Innovation Zone Program. The program shall provide economic assistance to KIZ companies for the purpose of improving and encouraging research and development efforts and technology commercialization efforts resulting in employment growth and revitalization of communities.

(b) Application.--A keystone innovation zone partnership may apply to the department to establish a keystone innovation zone. All applications must be received by July 1, 2007, be on the form required by the department and include and demonstrate all of the following:

(1) The KIZ coordinator's name and address.

(2) A statement that the applicant is a KIZ partnership and the identity of its members.

(3) The geographic boundaries of the proposed keystone innovation zone.

(4) A copy of a written strategic plan adopted by the KIZ partnership describing the targeted industry segments which the KIZ will foster.

(5) Any other information required by the department.

(c) Review and designation.--The department shall review the application. Upon being satisfied that all requirements have been met, the department may approve the application. If the department approves the application, the department shall designate the identified area as a keystone innovation zone and accept the organization designated as the KIZ coordinator for the zone.

3704. Assistance.

(a) Existing programs.--A KIZ company shall be eligible and may be given priority consideration in applying for assistance under any of the following:

(1) This title.

(2) The act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

(3) The act of August 23, 1967 (P.L.251, No.102), known as the Economic Development Financing Law.

(4) The act of June 22, 2001 (P.L.569, No.38), known as The Ben Franklin Technology Development Authority Act.

(5) The act of June 29, 1996 (P.L.434, No.67), known as the Job Enhancement Act.

(6) The act of June 26, 2001 (P.L.755, No.77), known as the Tobacco Settlement Act.

(7) Any other act enacted after the effective date of this subsection which has economic development assistance as its primary objective.

(b) Loans of the Pennsylvania Industrial Development Authority.--The board of the Pennsylvania Industrial Development Authority may provide loans to entities for land and structures, including structures providing space for research and development activities, in which, when completed, at least one KIZ company will be located. If the structure is intended to accommodate more than one KIZ company, at least 80% of the space

in the structure must be leased to KIZ companies. The board may establish the eligibility criteria, the interest rate, the loan term and the participation rate to be applied to these projects.

(c) KIZ operation grants.--

(1) The Ben Franklin Technology Development Authority may provide an annual KIZ operation grant of up to \$250,000 to a keystone innovation zone coordinator for administrative costs incurred in establishing and implementing the keystone innovation zone.

(2) In subsequent years, a grant shall be reduced in accordance with all of the following:

(i) By 25% of the initial amount in the second year.

(ii) By 50% of the initial amount of the grant in the third year.

(iii) By 75% of the initial amount of the grant in the fourth year.

(3) The Ben Franklin Technology Development Authority shall develop guidelines for the application, receipt and use of operation grant funds.

3705. Keystone innovation grants.

(a) Grants.--The department may provide keystone innovation grants to institutions of higher education to facilitate technology transfer, including patent filings, technology licensing, intellectual property and royalty agreements and other designated resource needs. The application must be on the form required by the department and must include or demonstrate all of the following:

(1) The applicant's name and address.

(2) The KIZ partnership of which the applicant is a member.

(3) A written proposal. The proposal must state all of the following:

(i) The technology transfer activities to be undertaken. The activities may include the addition of personnel who are directly related in transferring technology to the local businesses.

(ii) The quantifiable goals and objectives to be achieved.

(iii) How the activities, goals and objectives will integrate with the strategic plan adopted for the KIZ.

(iv) The role of the applicant and other members of the KIZ partnership.

(4) Identification of a dollar-to-dollar match, which may be in kind if the department determines that the proposed match can be readily identified and tracked and which is directly related to the stated goals and objectives.

(5) Any other information required by the department.

(b) Approval.--The department shall review the application and, upon being satisfied that all requirements have been met, the department may approve the application. Prior to releasing grant funds, the department shall enter into a contract with the applicant that contains all of the following:

(1) The grant may not exceed \$250,000 per year.

(2) Grants under this program shall not exceed \$750,000 in the aggregate per applicant under this program.

(3) The aggregate amount of grants awarded to all applicants under this subsection shall not exceed \$10,000,000 under this program.

(c) Penalty.--

(1) Except as provided in paragraph (2), the department shall impose a penalty upon a recipient of a grant for any of the following:

(i) If the recipient fails to use the grant for the technology transfer activities specified in the application.

(ii) If the recipient's membership in the KIZ partnership is terminated voluntarily or involuntarily.

(2) The department may waive the penalty required by paragraph (1) if the department determines that the failure was due to circumstances outside the control of the grant recipient.

(3) A penalty imposed under paragraph (1) shall be equal to the full amount of the grant received plus an additional amount of up to 10% of the amount of the grant received. The penalty shall be payable in one lump sum or in installments, with or without interest, as the department deems appropriate.

Effective Date. Section 6(2) of Act 12 of 2004 provided that section 3705 shall take effect July 1, 2004.

3706. Keystone innovation zone tax credits.

(a) Tax credit.--A KIZ company may claim a tax credit equal to 50% of the increase in the KIZ company's gross revenues in the immediately preceding taxable year attributable to activities in the KIZ over the KIZ company's gross revenues in the second preceding taxable year attributable to its activities in the KIZ. A tax credit for a KIZ company shall not exceed \$100,000 annually. For the purposes of the keystone innovation zone tax credit, the term "gross revenues" may include grants received by the KIZ company from any source whatsoever.

(b) Application for tax credit.--A KIZ company may file an application for a tax credit with the department. An application under this subsection must be filed by September 15 of each year for the prior taxable year, beginning September 15, 2006. The application must be submitted on a form required by the department and must be accompanied by a certification from the KIZ coordinator that the KIZ company falls within a targeted industry segment identified in the strategic plan adopted by the KIZ partnership. The department shall review the application and, upon being satisfied that all requirements have been met, the department shall issue a tax credit certificate to the KIZ company. All certificates shall be awarded by December 15 of each year.

(c) Limitation on tax credits.--

(1) The total amount of tax credits approved by the department shall not exceed \$25,000,000 for any one taxable year.

(2) If \$25,000,000 of the tax credits are not approved for any one taxable year, the unused portion shall not be available for use in future taxable years.

(3) If the total amount of tax credits applied for by all taxpayers for any one taxable year exceeds \$25,000,000, then the tax credit to be received by each applicant shall be determined as follows:

(i) Divide:

(A) the eligible tax credit applied for by the applicant; by

(B) the total of all eligible tax credits

applied for by all applicants.

(ii) Multiply:

(A) the quotient under subparagraph (i); by

(B) \$25,000,000.

(d) Application of tax credit and election.--A tax credit approved under this section must be first applied against the KIZ company's tax liability under Article III, IV or VI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, for the taxable year during which the tax credit is approved. If the amount of tax liability owed by the KIZ company is less than the amount of the tax credit, the KIZ company may elect to carry forward the amount of the remaining tax credit for a period not to exceed four additional taxable years and to apply the credit against tax liability incurred during those tax years; or the KIZ company may elect to sell or assign a portion of the tax credit in accordance with the provisions of subsection (f). A KIZ company may not carry back or obtain a refund of an unused keystone innovation zone tax credit.

(e) Pennsylvania S corporation shareholder pass-through.--

(1) If a Pennsylvania S corporation does not have an eligible tax liability against which the tax credit may be applied, a shareholder of the Pennsylvania S corporation is entitled to a tax credit equal to the product of:

(i) the tax credit determined for the Pennsylvania S corporation for the taxable year; and

(ii) the percentage of the Pennsylvania S corporation's distributive income to which the shareholder is entitled.

(2) The credit provided under paragraph (1) is in addition to any tax credit to which a shareholder of the Pennsylvania S corporation is otherwise entitled. However, a Pennsylvania S corporation and a shareholder of the Pennsylvania S corporation may not claim a tax credit under this section for the same activity.

(f) Sale or assignment of tax credit.--

(1) Upon application to and approval by the department, a KIZ company which has been awarded a tax credit may sell or assign, in whole or in part, the tax credit granted to the KIZ company. The application must be on the form required by the department and must include or demonstrate all of the following:

(i) The applicant's name and address.

(ii) A copy of the tax credit certificate previously issued by the department.

(iii) A statement as to whether any part of the tax credit has been applied to tax liability of the applicant and the amount so applied.

(iv) Any other information required by the department.

(2) The department shall review the application and, upon being satisfied that all requirements have been met, the department may approve the application and shall notify the Department of Revenue.

(g) Use of sold or assigned tax credit.--The purchaser or assignee of all or a portion of a keystone innovation zone tax credit under this section shall claim the credit in the taxable year in which the purchase or assignment is made. The purchaser or assignee of a tax credit may use the tax credit against any tax liability of the purchaser or assignee under Article III,

IV, VI, VII, VIII, IX or XV of the Tax Reform Code of 1971. The amount of the tax credit used may not exceed 75% of the purchaser's or assignee's tax liability for the taxable year. The purchaser or assignee may not carry over, carry back, obtain a refund of or assign the keystone innovation zone tax credit. The purchaser or assignee shall notify the department and the Department of Revenue of the seller or assignor of the keystone innovation zone tax credit in compliance with procedures specified by the department.

Effective Date. Section 6(2) of Act 12 of 2004 provided that section 3706 shall take effect July 1, 2004.

3707. Guidelines.

Before any keystone innovation zone is approved by the department, the department shall approve written guidelines for the program and shall provide a copy of the guidelines to the Majority Leader and Minority Leader of the Senate, the Majority Leader and Minority Leader of the House of Representatives, the chairman and minority chairman of the Appropriations Committee of the Senate and the chairman and minority chairman of the Appropriations Committee of the House of Representatives.

3708. Annual report.

The department shall submit an annual report to the Secretary of the Senate and the Chief Clerk of the House of Representatives indicating the effectiveness of the keystone innovation zone tax credit provided by this chapter by December 31 of each year, beginning December 31, 2007. Notwithstanding any law providing for the confidentiality of tax records, the report shall include the names of all taxpayers awarded the credits, all taxpayers utilizing the credits, the amount of credits approved and utilized by each taxpayer and the locations of the KIZ companies awarded the credits. The report shall be a public document.

CHAPTER 39
WATER SUPPLY AND WASTEWATER
INFRASTRUCTURE CAPITALIZATION

Sec.

- 3901. Scope of chapter.
- 3902. Definitions.
- 3903. Establishment.
- 3904. Award of grants.
- 3905. Award and administration of loans.
- 3906. Funds.
- 3907. Commonwealth indebtedness.

Enactment. Chapter 39 was added November 30, 2004, P.L.1708, No.218, effective immediately.

Special Provisions in Appendix. See section 7 of Act 218 of 2004 in the appendix to this title for special provisions relating to applicability.

Cross References. Chapter 39 is referred to in section 1543 of Title 64 (Public Authorities and Quasi-Public Corporations).

3901. Scope of chapter.

This chapter relates to the Water Supply and Wastewater Infrastructure Capitalization Program.

3902. Definitions.

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

"Applicant." A municipality, a municipal authority, industrial development corporation or an investor-owned water or wastewater enterprise that submits an application under 64 Pa.C.S. 1558 (relating to Water Supply and Wastewater Infrastructure Program).

"Authority." The Commonwealth Financing Authority established under 64 Pa.C.S. 1511 (relating to authority).

"Cost of a water project." Any of the following:

(1) Costs and expenses of acquisition of interests in land, infrastructure, buildings, structures, equipment, furnishings, fixtures and other tangible property which comprises the water project.

(2) Costs and expenses of construction, reconstruction, erection, equipping, expansion, improvement, installation, rehabilitation, renovation or repair of infrastructure, buildings, structures, equipment and fixtures which comprise the water project.

(3) Costs and expenses of demolishing, removing or relocating buildings or structures on lands acquired or to be acquired.

(4) Costs and expenses of preparing land for development.

(5) Costs and expenses of engineering services, financial services, accounting services, legal services, plans, specifications, studies and surveys necessary or incidental to determining the feasibility or practicability of the water project.

"Fund." The Water Supply and Wastewater Treatment Fund established in section 3906(b) (relating to funds).

"Industrial development corporation." An entity certified as an industrial development agency by the Pennsylvania Industrial Development Authority Board under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

"Investor-owned water or wastewater enterprise." A nonpublic entity which supplies water or provides wastewater services to the public for a fee.

"Municipal authority." A public authority created under 53 Pa.C.S. Ch. 56 (relating to municipal authorities) or under the former act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, which supplies water or provides wastewater services to the public for a fee.

"Sinking fund." The Water Supply and Wastewater Treatment Sinking Fund established in section 3906(b) (relating to funds).

"Water project." As that term is defined in 64 Pa.C.S. 1504 (relating to definitions).

3903. Establishment.

There is established within the department a program to be known as the Water Supply and Wastewater Infrastructure Capitalization Program. The program shall finance single-year or multiyear grants to municipalities and municipal authorities and loans to municipalities, municipal authorities, industrial development corporations and investor-owned water or wastewater enterprises for water projects which are approved by the authority, which, when completed, construct, expand or improve water and wastewater infrastructure and which are related to

economic development.

3904. Award of grants.

Upon being notified by the authority that a grant has been approved under 64 Pa.C.S. 1558(c) (relating to Water Supply and Wastewater Infrastructure Program) for an applicant, the department shall enter into a contract with the applicant. The contract shall be for the amount approved by the authority, and if the grant provided for improvements on a site of a private facility that has or will be receiving additional economic development assistance or job creation tax credits from the Commonwealth, the contract shall include a provision that ensures that if the facility is closed or is sold within five years after the approval of the application, the Commonwealth shall request reimbursement of the grant and shall place a lien for that amount on the real property of that facility to remain on the real property until the Commonwealth receives reimbursement. Upon entering into a contract with the applicant, the department shall award the grant for the amount specified in the contract.

3905. Award and administration of loans.

(a) Award.--

(1) Upon being notified that a loan has been approved under 64 Pa.C.S. 1558(d) (relating to Water Supply and Wastewater Infrastructure Program) for an applicant, the department shall enter into a contract with the applicant. The contract shall be for the amount approved and shall specify the terms of the loan in accordance with all of the following:

(i) A loan shall be at an interest rate not to exceed 2%.

(ii) A loan shall be for a term not to exceed 20 years.

(2) Upon entering into a contract with the applicant, the department shall award the loan for the amount specified in the contract.

(b) Administration.--Loans made under this section shall be administered by the department. Loan payments received by the department for a loan awarded under this section shall be deposited in the General Fund.

3906. Funds.

(a) Proceeds.--Proceeds of the borrowing authorized by the electors pursuant to the act of February 12, 2004 (P.L.72, No.10), known as the Water and Wastewater Treatment Project Bond Act, shall be deposited in the fund.

(b) Fund.--

(1) The Water Supply and Wastewater Treatment Fund is established as a restricted fund in the State Treasury.

(2) The fund shall be used in accordance with the following:

(i) \$200,000,000 shall be used by the department to fund grants and loans in accordance with this chapter.

(ii) \$50,000,000 shall be used by the Pennsylvania Infrastructure Investment Authority to finance projects of existing water and wastewater systems which, when complete, do any of the following:

(A) Repair, rehabilitate or modernize existing water or wastewater systems to meet environmental or public health standards.

(B) Eliminate existing combined or sanitary

wastewater overflow problems.

(C) Construct water or wastewater infrastructure to improve public health or eliminate environmental concerns.

(D) Construct wastewater infrastructure utilizing nutrient reduction technology.

(c) Sinking Fund.--The Water Supply and Wastewater Treatment Sinking Fund is established to make principal and interest payments under section 3907(d) (relating to Commonwealth indebtedness).

Cross References. Section 3906 is referred to in section 3902 of this title.

3907. Commonwealth indebtedness.

(a) Borrowing authorized.--

(1) Pursuant to section 7(a)(3) of Article VIII of the Constitution of Pennsylvania and the approval by the electorate on April 27, 2004, of the referendum authorized by the act of February 12, 2004 (P.L.72, No.10), known as the Water and Wastewater Treatment Project Bond Act, the issuing officials are authorized and directed to borrow, on the credit of the Commonwealth, money not exceeding in the aggregate the sum of \$250,000,000, not including money borrowed to refund outstanding bonds, notes or replacement notes, as may be found necessary to carry out the purposes of this chapter.

(2) All bonds and notes issued under this chapter shall be:

(i) exempt from taxation for State and local purposes; and

(ii) eligible for tax-exempt status under existing Federal law.

(3) Borrowing authorized under paragraph (1) shall be made in accordance with the provisions of sections 307 and 308 of the act of February 9, 1999 (P.L.1, No.1), known as the Capital Facilities Debt Enabling Act.

(b) Sale of bonds.--

(1) If bonds are issued, all sales of the bonds shall be made in accordance with the provisions of section 309 of the Capital Facilities Debt Enabling Act.

(2) The proceeds realized from the sale of bonds and notes, except refunding bonds and replacement notes, under this chapter shall be paid into the fund and are specifically dedicated to the purposes of this chapter. The proceeds shall be paid by the State Treasurer periodically to the department at times and in amounts as necessary to satisfy the funding needs of the department under this chapter. The proceeds of the sale of refunding bonds and replacement notes shall be paid to the State Treasurer and applied to the payment of principal, any accrued interest and premium and cost of redemption of the bonds and notes for which the obligations have been issued.

(3) Pending their application for the purposes authorized, money held or deposited by the State Treasurer may be invested or reinvested as are other funds in the custody of the State Treasurer in the manner provided by law. All earnings received from the investment or deposit of the funds shall be paid into the State Treasury to the credit of the fund.

(4) The Auditor General shall prepare the necessary registry book to be kept in the office of the authorized loan and transfer agent of the Commonwealth for the registration of bonds, at the request of owners of the bonds, according to the terms and conditions of issue directed by the issuing officials.

(5) There is hereby appropriated to the State Treasurer from the fund as much money as may be necessary for all costs and expenses in connection with the issue of and sale and registration of the bonds and notes in connection with this chapter and the payment of interest arbitrage rebates.

(c) Temporary financing authorization.--

(1) Pending the issuance of bonds of the Commonwealth as authorized, the issuing officials are authorized, in accordance with this chapter and on the credit of the Commonwealth, to make temporary borrowings not to exceed one year in anticipation of the issue of bonds in order to provide funds in amounts as deemed advisable prior to the issue of bonds. In order to provide for and in connection with any temporary borrowing, the issuing officials are authorized in the name and on behalf of the Commonwealth to enter into purchase, loan or credit agreement or other agreement with any bank or trust company, other lending institution, investment banking firm or person in the United States having power to enter into the agreement. The agreement may contain provisions not inconsistent with this chapter as authorized by the issuing officials.

(2) Temporary borrowings made under this subsection shall be made in accordance with the provisions of section 306(b), (c) and (d) of the Capital Facilities Debt Enabling Act.

(3) Outstanding notes evidencing the borrowings may be funded and retired by the issuance and sale of the bonds of the Commonwealth as authorized in this paragraph. The refunding bonds shall be issued and sold not later than a date one year after the date of issuance of the first notes evidencing the borrowing to the extent that payment of the notes has not otherwise been made or provided for by sources other than proceeds of replacement notes.

(4) The proceeds of all temporary borrowing shall be paid to the State Treasurer to be held and disposed of in accordance with this chapter.

(d) Debt retirement.--

(1) All bonds issued under the authority of this chapter shall be redeemed at maturity, together with all interest due. Principal and interest payments shall be paid from the sinking fund. For the specific purpose of redeeming the bonds at maturity and paying all interest on the bonds in accordance with the information received from the Governor, the General Assembly shall appropriate money for the payment of interest on the bonds and notes and the principal of the bonds and notes at maturity. All money paid into the sinking fund and all of the money not necessary to pay accruing interest shall be invested by the State Treasurer in securities as are provided by law for the investment of the sinking funds of the Commonwealth.

(2) The State Treasurer shall determine and report to the Secretary of the Budget by November 1 of each year the amount of money necessary for the payment of any interest on

outstanding obligations and the principal of the obligations for the following fiscal year and the times and amounts of the payments. The Governor shall include in every budget submitted to the General Assembly full information relating to the issuance of bonds and notes under this chapter and the status of the fund and the sinking fund for the payment of interest on the bonds and notes and the principal of the bonds and notes at maturity.

(3) The General Assembly shall appropriate for deposit into the sinking fund an amount equal to the sum necessary to meet repayment obligations for principal and interest.

(e) Definition.--As used in this section, the term "issuing officials" means the Governor, the Auditor General and the State Treasurer.

Cross References. Section 3907 is referred to in section 3906 of this title.

CHAPTER 41 FILM PRODUCTION GRANTS

- 4101. Scope of chapter.
- 4102. Definitions.
- 4103. Establishment.
- 4104. Application.
- 4105. Review.
- 4106. Approval.
- 4107. Penalty.
- 4108. Limitations.
- 4109. Guidelines.

Enactment. Chapter 41 was added May 11, 2006, P.L.167, No.42, effective immediately.

4101. Scope of chapter.

This chapter relates to the Film Production Grant Program.

4102. Definitions.

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

"Applicant." A person that files a notice and application in accordance with this chapter.

"Department." The Department of Community and Economic Development of the Commonwealth.

"Film." The term includes a feature film, television film, television pilot or each episode of a television series which is intended as programming for a national audience. The term does not include a production featuring:

- (1) News, current events, weather and market reports.
- (2) Public programming.
- (3) Talk shows, game shows, sports events, awards shows or other gala events.
- (4) A production that solicits funds.
- (5) A production that primarily markets a product or service.
- (6) A production containing obscene material or performances as defined in 18 Pa.C.S. 5903(b) (relating to obscene and other sexual materials and performances).
- (7) A production primarily for private, political,

industrial, corporate or institutional purposes.

"Pennsylvania production expense." A production expense incurred in this Commonwealth. For the purposes of wages and salaries, the term includes only wages and salaries on which the taxes imposed by Article III or IV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, have been paid or accrued.

"Production expense."

(1) An expense incurred in the production of a film. The term includes:

(i) The aggregate amount of wages and salaries of individuals each of whom receive less than \$1,000,000 and are employed in the production of the film.

(ii) The costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories.

(iii) The cost of rental facilities and equipment.

(2) The term does not include expenses incurred in purchasing story rights, music rights, development costs, marketing or advertising a film.

"Program." The Film Production Grant Program established in section 4103 (relating to establishment).

"Qualified film production expense." A Pennsylvania production expense if at least 60% of the total production expenses are Pennsylvania production expenses.

"Recipient." A person who receives a grant under this chapter.

"Start date." The first day of principal photography in this Commonwealth.

4103. Establishment.

There is established within the department a program to be known as the Film Production Grant Program. The program shall be administered by the department to provide grants to persons for certain films produced within this Commonwealth.

Cross References. Section 4103 is referred to in section 4102 of this title.

4104. Application.

At any time prior to 60 days after the completion of production of a film, a person may submit an application for a film production grant to the department. The application shall be on a form required by the department and shall include or demonstrate all of the following:

(1) An itemized list of production expenses incurred or to be incurred during the current fiscal year and the anticipated expenses to be incurred for any subsequent year if the film production is anticipated to extend into any such year.

(2) An itemized list of Pennsylvania production expenses incurred.

(3) The start date.

(4) The actual or projected completion date.

(5) A statement of the amount of grant sought.

(6) Any other information required by the department.

Cross References. Section 4104 is referred to in section 4105 of this title.

4105. Review.

The department shall review the application to determine if

the applicant has met all of the criteria set forth in section 4104 (relating to application).

4106. Approval.

The following shall apply:

(1) Upon being satisfied that all requirements have been met and subject to section 4108 (relating to limitations), the department may approve the application and award a film production grant.

(2) Prior to providing grant funds to the applicant, the department shall enter into a contract with the applicant. The contract shall include provisions requiring the applicant to use the grant to pay costs associated with the production of the film.

(3) The department may impose any other terms and conditions on the grants authorized by this chapter as the department determines are in the best interests of the Commonwealth.

Cross References. Section 4106 is referred to in section 4107 of this title.

4107. Penalty.

(a) Imposition.--Except as provided in subsection (b), the department shall impose a penalty upon a recipient for violation of the contract required by section 4106 (relating to approval).

(b) Exception.--The department may waive the penalty required by subsection (a) if the department determines that the failure was due to circumstances outside the control of the recipient.

(c) Amount.--The amount of the penalty shall be equal to the full amount of the grant received plus an additional amount of up to 10% of the amount of the grant received. The penalty shall be payable in one lump sum or in installments, with or without interest, as the department deems appropriate.

4108. Limitations.

The following limitations shall apply:

(1) A grant awarded under this chapter to an applicant for a film may not exceed 20% of the qualified film production expenses incurred for the film.

(2) In no case shall the aggregate amount of grants awarded in any fiscal year under this chapter exceed \$10,000,000.

(3) A grant awarded under this chapter shall in no way constitute an entitlement derived from the Commonwealth or a claim on any other funds of the Commonwealth.

Cross References. Section 4108 is referred to in section 4106 of this title.

4109. Guidelines.

The department shall develop necessary written guidelines for the program.

CHAPTER 51
FRAUDULENT TRANSFERS

Sec.

5101. Short title of chapter and definitions.

5102. Insolvency.

5103. Value.

- 5104. Transfers fraudulent as to present and future creditors.
- 5105. Transfers fraudulent as to present creditors.
- 5106. When transfer is made or obligation is incurred.
- 5107. Remedies of creditors.
- 5108. Defenses, liability and protection of transferee.
- 5109. Extinguishment of cause of action.
- 5110. Supplementary provisions.

Enactment. Chapter 51 was added December 3, 1993, P.L.479, No.70, effective in 60 days.

Cross References. Chapter 51 is referred to in sections 1957, 5957, 8580, 8965 of Title 15 (Corporations and Unincorporated Associations); section 4352 of Title 23 (Domestic Relations).

5101. Short title of chapter and definitions.

(a) Short title of chapter.--This chapter shall be known and may be cited as the Pennsylvania Uniform Fraudulent Transfer Act.

(b) Definitions.--The following words and phrases when used in this chapter shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Asset." Property of a debtor. The term does not include:

- (1) property to the extent it is encumbered by a valid lien;
- (2) property to the extent it is generally exempt under nonbankruptcy law; or
- (3) an interest in property held in tenancy by the entirety to the extent it is not subject to process by a creditor holding a claim against only one tenant.

"Claim." A right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

"Creditor." A person who has a claim.

"Debt." Liability on a claim.

"Debtor." A person who is liable on a claim.

"Lien." A charge against or an interest in property to secure payment of a debt or performance of an obligation. The term includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common law lien or a statutory lien.

"Person." An individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust or any other legal or commercial entity.

"Property." Anything that may be the subject of ownership.

"Transfer." Every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset. The term includes payment of money, release, lease and creation of a lien or other encumbrance.

"Valid lien." A lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

5102. Insolvency.

(a) General rule.--A debtor is insolvent if, at fair valuations, the sum of the debtor's debts is greater than all of the debtor's assets.

(b) Presumption of insolvency.--A debtor who is generally

not paying the debtor's debts as they become due is presumed to be insolvent. This presumption shall impose on the party against whom the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(c) When partnerships are insolvent.--A partnership is insolvent under subsection (a) if, at fair valuations, the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(d) Exclusion of certain assets.--Assets under this section do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors or that has been transferred in a manner making the transfer fraudulent under this chapter.

(e) Exclusion of certain debts.--Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

5103. Value.

(a) General rule.--Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) Reasonably equivalent value.--For the purposes of sections 5104(a)(2) (relating to transfers fraudulent as to present and future creditors) and 5105 (relating to transfers fraudulent as to present creditors), a person gives reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or the exercise of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust or security agreement or pursuant to a regularly conducted, noncollusive execution sale.

5104. Transfers fraudulent as to present and future creditors.

(a) General rule.--A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) Certain factors.--In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether:

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the

property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) the transfer was of substantially all the debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Cross References. Section 5104 is referred to in sections 5103, 5108, 5109 of this title.

5105. Transfers fraudulent as to present creditors.

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

Cross References. Section 5105 is referred to in sections 5103, 5108, 5109 of this title.

5106. When transfer is made or obligation is incurred.

For the purposes of this chapter:

(1) A transfer is made:

(i) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(ii) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in paragraph (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in paragraph (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

(i) if oral, when it becomes effective between the parties; or

(ii) if evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

5107. Remedies of creditors.

(a) Available remedies.--In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in sections 5108 (relating to defenses, liability and protection of transferee) and 5109 (relating to extinguishment of cause of action), may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by applicable law.

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(b) Execution.--If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, subject to the limitations of sections 5108 and 5109, may levy execution on the asset transferred or its proceeds.

Cross References. Section 5107 is referred to in section 5108 of this title.

5108. Defenses, liability and protection of transferee.

(a) Certain transfers or obligations not fraudulent.--A transfer or obligation is not fraudulent under section 5104(a)(1) (relating to transfers fraudulent as to present and future creditors) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Judgment for certain voidable transfers.--Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under section 5107(a)(1) (relating to remedies of creditors), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

(2) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(c) Measure of recovery.--If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset

at the time of the transfer, subject to adjustment as the equities may require.

(d) Rights of good faith transferee or obligee.-- Notwithstanding voidability of a transfer or an obligation under this chapter, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

- (1) a lien on or a right to retain any interest in the asset transferred;
- (2) enforcement of any obligation incurred; or
- (3) a reduction in the amount of the liability on the judgment.

(e) Certain transfers not fraudulent.--A transfer is not fraudulent under section 5104(a)(2) or 5105 (relating to transfers fraudulent as to present creditors) if the transfer results from:

- (1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
- (2) enforcement of a security interest in compliance with 13 Pa.C.S. Div. 9 (relating to secured transactions), other than an acceptance of collateral in full or partial satisfaction of the obligations it secures under 13 Pa.C.S. 9620 (relating to acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral).

The references to 13 Pa.C.S. Div. 9 and 13 Pa.C.S. 9620 in paragraph (2) shall also be deemed to refer to the corresponding provisions of the Uniform Commercial Code as in effect in any other jurisdiction.

(June 8, 2001, P.L.123, No.18, eff. July 1, 2001)

2001 Amendment. Act 18 amended subsec. (e).

Cross References. Section 5108 is referred to in section 5107 of this title.

5109. Extinguishment of cause of action.

A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

- (1) under section 5104(a)(1) (relating to transfers fraudulent as to present and future creditors), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant; or
- (2) under section 5104(a)(2) or 5105 (relating to transfers fraudulent as to present creditors), within four years after the transfer was made or the obligation was incurred.

Cross References. Section 5109 is referred to in section 5107 of this title.

5110. Supplementary provisions.

Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency or other validating or invalidating cause, supplement its provisions.

CHAPTER 53
TRADE SECRETS

Sec.

- 5301. Short title of chapter.
- 5302. Definitions.
- 5303. Injunctive relief.
- 5304. Damages.
- 5305. Attorney fees.
- 5306. Preservation of secrecy.
- 5307. Statute of limitations.
- 5308. Effect on other law.

Enactment. Chapter 53 was added February 19, 2004, P.L.143, No.14, effective in 60 days.

Special Provisions in Appendix. See sections 3 and 4 of Act 14 of 2004 in the appendix to this title for special provisions relating to construction and application of law and misappropriations occurring prior to Act 14.

5301. Short title of chapter.

This chapter shall be known and may be cited as the Uniform Trade Secrets Act.

5302. Definitions.

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

"Improper means." Includes, but is not limited to, theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means.

"Misappropriation." Includes:

(1) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(2) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

(A) derived from or through a person who had utilized improper means to acquire it;

(B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

"Person." A natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency or any other legal or commercial entity.

"Trade secret." Information, including a formula, drawing, pattern, compilation including a customer list, program, device, method, technique or process that:

(1) Derives independent economic value, actual or

potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

"Willful and malicious." Such intentional acts or gross neglect of duty as to evince a reckless indifference of the rights of others on the part of the wrongdoer, and an entire want of care so as to raise the presumption that the person at fault is conscious of the consequences of his carelessness.

5303. Injunctive relief.

(a) Injunctions.--Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(b) Exceptional circumstances.--In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(c) Affirmative acts compelled by court order.--In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

5304. Damages.

(a) Monetary damages.--Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(b) Exemplary damages.--If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).

5305. Attorney fees.

A court may award reasonable attorney fees, expenses and costs to the prevailing party:

- (1) if a claim of misappropriation is made in bad faith;
- (2) a motion to terminate an injunction is made or resisted in bad faith; or
- (3) willful and malicious misappropriation exists.

5306. Preservation of secrecy.

In any action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means which may include, but are not limited to, granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action and ordering any person involved in the litigation not to disclose an alleged

trade secret without prior court approval.

5307. Statute of limitations.

An action under this chapter for misappropriation must be brought within three years after the misappropriation was discovered or by the exercise of reasonable diligence should have been discovered.

5308. Effect on other law.

(a) General rule.--Except as provided in subsection (b), this chapter displaces conflicting tort, restitutionary and other law of this Commonwealth providing civil remedies for misappropriation of a trade secret.

(b) Exceptions.--This chapter does not affect:

(1) contractual remedies, whether or not based upon misappropriation of a trade secret;

(2) other civil remedies that are not based upon misappropriation of a trade secret; or

(3) criminal remedies, whether or not based upon misappropriation of a trade secret.

CHAPTER 56 MUNICIPAL AUTHORITIES

Sec.

5601. Short title of chapter.

5602. Definitions.

5603. Method of incorporation.

5604. Municipalities withdrawing from and joining in joint authorities.

5605. Amendment of articles.

5606. School district projects.

5607. Purposes and powers.

5608. Bonds.

5609. Bondholders.

5610. Governing body.

5611. Investment of authority funds.

5612. Money of authority.

5613. Transfer of existing facilities to authority.

5614. Competition in award of contracts.

5615. Acquisition of lands, water and water rights.

5616. Acquisition of capital stock.

5617. Use of projects.

5618. Pledge by Commonwealth.

5619. Termination of authority.

5620. Exemption from taxation and payments in lieu of taxes.

5621. Constitutional construction.

5622. Conveyance by authorities to municipalities or school districts of established projects.

5623. Revival of an expired authority.

Enactment. Chapter 56 was added June 19, 2001, P.L.287, No.22, effective immediately.

Special Provisions in Appendix. See sections 2 and 4 of Act 22 of 2001 in the appendix to this title for special provisions relating to applicability to authorities incorporated under former laws and continuation of Municipality Authorities Act of 1945.

Cross References. Chapter 56 is referred to in sections 2102, 3402 of Title 12 (Commerce and Trade); section 1504 of

Title 64 (Public Authorities and Quasi-Public Corporations).

CHAPTER 97
FOREIGN CURRENCY

Sec.

9701. Continuity of contract under European monetary union.

Enactment. Chapter 97 was added December 3, 1998, P.L.939, No.122, effective immediately.

Applicability. Section 2 of Act 122 provided that the addition of Chapter 97 shall apply to contracts, securities and instruments entered into or issued before, on or after the effective date of Act 122.

9701. Continuity of contract under European monetary union.

(a) Continuity of contract.--

(1) If a subject or medium of payment of a contract, security or instrument is a currency that has been substituted or replaced by the euro, the euro shall be a commercially reasonable substitute and substantial equivalent that may be either:

(i) used in determining the value of that currency;

or

(ii) tendered;

in each case at the conversion rate specified in and otherwise calculated in accordance with the regulations adopted by the Council of the European Union.

(2) If a subject or medium of payment of a contract, security or instrument is the ECU, the euro will be a commercially reasonable substitute and substantial equivalent that may be either:

(i) used in determining the value of that currency;

or

(ii) tendered;

in each case at the conversion rate specified in and otherwise calculated in accordance with the regulations adopted by the Council of the European Union.

(3) Performance of any of the obligations described in paragraph (1) or (2) may be made in the currency or currencies originally designated in the contract, security or instrument so long as the currency or currencies remain legal tender or in euro, but not in any other currency, whether or not the other currency:

(i) has been substituted or replaced by the euro; or

(ii) is a currency that is considered a denomination of the euro and has a fixed conversion rate with respect to the euro.

(b) Effect of currency substitution on performance.--None of the following shall have the effect of discharging or excusing performance under any contract, security or instrument or give a party the right unilaterally to alter or terminate any contract, security or instrument:

(1) Introduction of the euro.

(2) Tender of euros in connection with any obligation in compliance with subsection (a)(1) or (2).

(3) Determination of the value of any obligation in compliance with subsection (a)(1) or (2).

(4) Calculation or determination of the subject or

medium of payment of a contract, security or instrument with reference to an interest rate or other basis that has been substituted or replaced due to the introduction of the euro and that is a commercially reasonable substitute and substantial equivalent.

(c) References to ECU in contracts.--When the euro first becomes the monetary unit of participating member states of the European Union, references to the ECU in a contract, security or instrument that also refers in substance to the definition of the ECU as set forth in subsection (g) shall be replaced by references to the euro at a rate of one euro to one ECU. References to the ECU in a contract, security or instrument without such a definition of the ECU shall be presumed, rebuttable by proof of the contrary intention of the parties, to be references to the currency basket that is from time to time used as the unit of account of the European Community.

(d) Effect of agreements.--This section shall not alter or impair and shall be subject to any agreements between parties with specific reference to the introduction of the euro.

(e) Application.--Notwithstanding the provisions of Title 13 (relating to commercial code) or any other law of this Commonwealth, this section shall apply to all contracts, securities and instruments, including contracts with respect to commercial transactions, and shall not be deemed to be displaced by any other law of this Commonwealth.

(f) No application to other currency alteration.--In circumstances of currency alteration other than the introduction of the euro, this section shall not be interpreted as creating any negative inference or negative presumption regarding the validity or enforceability of contracts, securities or instruments denominated in whole or part in a currency affected by that alteration.

(g) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"ECU" or "European currency unit." The currency basket that is from time to time used as the unit of account of the European Community, as defined in European Council Regulation No.3320/94.

"Euro." The currency of participating member states of the European Union that adopt a single currency in accordance with the Treaty on European Union signed February 7, 1992.

"Introduction of the euro." Includes, but is not limited to, the implementation from time to time of economic and monetary union in member states of the European Union in accordance with the Treaty on European Union signed February 7, 1992.

CHAPTER 98 ASSEMBLED INDUSTRIAL PLANT DOCTRINE

Sec.

9801. Assembled industrial plant doctrine abolished.

Enactment. Chapter 98 was added June 8, 2001, P.L.123, No.18, effective July 1, 2001.

9801. Assembled industrial plant doctrine abolished.

(a) General rule.--The assembled industrial plant doctrine, sometimes referred to as the integrated industrial plant doctrine or the integrated industrial mortgage doctrine, is

abolished. Whether personal property placed or installed in an industrial, commercial or other establishment is a fixture shall be determined by other law.

(b) Eminent domain not affected.--Subsection (a) shall not be construed to affect the application of the assembled economic unit doctrine in the context of eminent domain.

(c) Applicability.--This section shall not apply to actions or proceedings commenced before the effective date of this section, nor shall it affect construction of a mortgage or other instrument creating an interest in real estate entered into before the effective date of this section. Subsection (a) shall not be construed to affirm the continuing applicability or scope of the assembled industrial plant doctrine before the effective date of this section.

APPENDIX TO TITLE 12
COMMERCE AND TRADE

Supplementary Provisions of Amendatory Statutes

1993, DECEMBER 3, P.L.479, NO.70

2. Statutory construction.

In applying and construing 12 Pa.C.S. Ch. 51 (relating to fraudulent transfers), added by this act, comments or reports of the type referred to in 1 Pa.C.S. 1939 (relating to use of comments and reports) shall control in the event of a conflict between such comments or reports and the policy of uniformity provided under 1 Pa.C.S. 1927 (relating to construction of uniform laws).

Explanatory Note. Act 70 added Chapter 51 of Title 12.

4. Applicability.

This act shall apply to transfers made or obligations incurred on or after the effective date of this act. With respect to transfers made or obligations incurred prior to the effective date of this act, the law in effect at the time the transfer was made or the obligation was incurred shall apply. For purposes of this section, transfers shall be deemed made and obligations shall be deemed incurred at the times provided in 12 Pa.C.S. 5106 (relating to when transfer is made or obligation is incurred).

2004, FEBRUARY 12, P.L.99, NO.12

1. Legislative findings and declarations.

The General Assembly finds and declares as follows:

(1) An economic stimulus program which provides direct immediate economic assistance to Pennsylvania businesses, industries, communities, their instrumentalities and economic development organizations is necessary for the preservation and creation of jobs within this Commonwealth.

(2) By targeting grant and loan assistance to these entities for job creation and site development, the Commonwealth will trigger needed redevelopment and economic growth within this Commonwealth.

(3) By targeting assistance to the greatest extent possible to previously used sites, the Commonwealth can foster the redevelopment of older communities, the reuse of industrial brownfield sites and the protection of open space while encouraging more efficient and effective use of existing environmental infrastructure, improving the environment and protecting the general public health and safety.

(4) By expanding tax-based financing of economic development projects, the Commonwealth will assist communities in retaining and recruiting employers to this Commonwealth.

(5) By targeting grant and loan assistance to the tourism and agriculture sectors of the Commonwealth's economy, the Commonwealth will provide additional financial support to those leading Commonwealth industries hard hit by world events and economic instability.

(6) By targeting capital investment to emerging and growth sector business, the Commonwealth will stimulate the growth and increase the stability of businesses within this Commonwealth.

(7) By preparing communities within this Commonwealth for the Federal Base Realignment and Closure (BRAC) process, the Commonwealth will increase the number of existing jobs it retains during the next round of Federal base realignment and closures. of tax records, the report shall include the names of all taxpayers awarded the credits, all taxpayers utilizing the credits, the amount of credits approved and utilized by each taxpayer and the locations of the KIZ companies awarded the credits. The report shall be a public document.

Explanatory Note. Act 12 added Parts I, II and III of Title 12.

4. Continuation of prior law.

Chapters 3, 7, 13, 17 and 30 of the act of June 29, 1996 (P.L.434, No.67), known as the Job Enhancement Act, are continued by this codification as follows:

(1) The addition of 12 Pa.C.S. Ch. 3 is a continuation of Chapter 3 of the Job Enhancement Act. The following apply:

(i) Except as otherwise provided in 12 Pa.C.S. Ch. 3, all activities initiated under Chapter 3 of the Job Enhancement Act shall continue and remain in full force and effect and may be completed under 12 Pa.C.S. Ch. 3. Orders, regulations, rules and decisions which were made under Chapter 3 of the Job Enhancement Act and which are in effect on the effective date of section 2(1)(i) of this act shall remain in full force and effect until revoked, vacated or modified under 12 Pa.C.S. Ch. 3. Contracts, obligations and collective bargaining agreements entered into under Chapter 3 of the Job Enhancement Act are not affected nor impaired by the repeal of Chapter 3 of the Job Enhancement Act.

(ii) Except as set forth in subparagraph (iii), any difference in language between 12 Pa.C.S. Ch. 3 and

Chapter 3 of the Job Enhancement Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Chapter 3 of the Job Enhancement Act.

(iii) Subparagraph (ii) does not apply to the addition of 12 Pa.C.S. 303.

(2) The addition of 12 Pa.C.S. Ch. 5 is a continuation of Chapter 17 of the Job Enhancement Act. The following apply:

(i) All activities initiated under Chapter 17 of the Job Enhancement Act shall continue and remain in full force and effect and may be completed under 12 Pa.C.S. Ch. 5. Orders, regulations, rules and decisions which were made under Chapter 17 of the Job Enhancement Act and which are in effect on the effective date of section 2(1)(iv) of this act shall remain in full force and effect until revoked, vacated or modified under 12 Pa.C.S. Ch. 5. Contracts, obligations and collective bargaining agreements entered into under Chapter 17 of the Job Enhancement Act are not affected nor impaired by the repeal of Chapter 17 of the Job Enhancement Act.

(ii) Except as set forth in subparagraph (iii), any difference in language between 12 Pa.C.S. Ch. 5 and Chapter 17 of the Job Enhancement Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Chapter 17 of the Job Enhancement Act.

(iii) Subparagraph (ii) does not apply to the following:

(A) The addition of 12 Pa.C.S. 502.

(B) The addition of 12 Pa.C.S. 503.

(iv) The members of Small Business Council in office on the effective date of section 3(2)(iv) of this act shall continue in office under the addition of 12 Pa.C.S. Ch. 5.

(3) The addition of 12 Pa.C.S. Ch. 21 is a continuation of Chapter 7 of the Job Enhancement Act. The following apply:

(i) Except as otherwise provided in 12 Pa.C.S. Ch. 21, all activities initiated under the Chapter 7 of the Job Enhancement Act shall continue and remain in full force and effect and may be completed under 12 Pa.C.S. Ch. 21. Orders, regulations, rules and decisions which were made under Chapter 7 of the Job Enhancement Act and which are in effect on the effective date of section 2(1)(ii) of this act shall remain in full force and effect until revoked, vacated or modified under 12 Pa.C.S. Ch. 21. Contracts, obligations and collective bargaining agreements entered into under Chapter 7 of the Job Enhancement Act are not affected nor impaired by the repeal of Chapter 7 of the Job Enhancement Act.

(ii) Except as set forth in subparagraph (iii), any difference in language between 12 Pa.C.S. Ch. 21 and Chapter 7 of the Job Enhancement Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the

legislative intent, judicial construction or administration and implementation of Chapter 7 of the Job Enhancement Act.

(iii) Subparagraph (ii) does not apply to any of the following provisions:

(A) The addition of 12 Pa.C.S. 2106(2).

(B) The addition of 12 Pa.C.S. 2109.

(4) The addition of 12 Pa.C.S. Ch. 23 is a continuation of Chapter 13 of the Job Enhancement Act. The following apply:

(i) Except as otherwise provided in 12 Pa.C.S. Ch. 23, all activities initiated under Chapter 13 of the Job Enhancement Act shall continue and remain in full force and effect and may be completed under 12 Pa.C.S. Ch. 23. Orders, regulations, rules and decisions which were made under Chapter 13 of the Job Enhancement Act and which are in effect on the effective date of section 2(1)(iii) of this act shall remain in full force and effect until revoked, vacated or modified under 12 Pa.C.S. Ch. 23. Contracts, obligations and collective bargaining agreements entered into under Chapter 13 of the Job Enhancement Act are not affected nor impaired by the repeal of Chapter 13 of the Job Enhancement Act.

(ii) Except as set forth in subparagraph (iii), any difference in language between 12 Pa.C.S. Ch. 23 and Chapter 13 of the Job Enhancement Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Chapter 13 of the Job Enhancement Act.

(iii) Subparagraph (ii) does not apply to any of the following provisions:

(A) The addition of 12 Pa.C.S. 2305(a).

(B) The addition of 12 Pa.C.S. 2306(a), (b), (c) and (e).

(C) The addition of 12 Pa.C.S. 2308(a), (b) and (c).

(D) The addition of 12 Pa.C.S. 2309(b).

(E) The addition of 12 Pa.C.S. 2310(b).

(iv) In continuation of section 1302 of the Job Enhancement Act, all funds, accounts, assets, encumbrances and liabilities located in or associated with the Air Quality Improvement Fund, the Storage Tank Loan Fund and the Recycling Incentive Development Account shall be transferred to the Pollution Prevention Assistance Account and shall be administered in accordance with 12 Pa.C.S. 2304 and 2309. The Department of Community and Economic Development shall report annually to the Department of Environmental Protection on the status of the Pollution Prevention Assistance Account and the loans made under 12 Pa.C.S. 2309.

(v) In continuation of section 1309(a) of the Job Enhancement Act, as of July 1, 1997, all funds, accounts, assets, encumbrances and liabilities located in or associated with the Capital Loan Fund shall be transferred to the Small Business First Fund and shall thereafter be administered in accordance with 12 Pa.C.S.

Ch. 23.

(vi) In continuation of section 1309(b) of the Job Enhancement Act, annually on July 1, the State Treasurer may transfer, upon approval by the Governor, up to \$2,000,000 from the Hazardous Sites Cleanup Fund into the Pollution Prevention Assistance Account. This transfer shall be in addition to other appropriations, Federal funding and private contributions received by the account.

(5) The addition of 12 Pa.C.S. Ch. 29 is a continuation of Chapter 30 of the Job Enhancement Act. The following apply:

(i) Except as otherwise provided in 12 Pa.C.S. Ch. 29, all activities initiated under Chapter 30 of the Job Enhancement Act shall continue and remain in full force and effect and may be completed under 12 Pa.C.S. Ch. 29. Orders, regulations, rules and decisions which were made under Chapter 30 of the Job Enhancement Act and which are in effect on the effective date of section 2(1)(v) of this act shall remain in full force and effect until revoked, vacated or modified under 12 Pa.C.S. Ch. 29. Contracts, obligations and collective bargaining agreements entered into under Chapter 30 of the Job Enhancement Act are not affected nor impaired by the repeal of Chapter 30 of the Job Enhancement Act.

(ii) Except as set forth in subparagraph (iii), any difference in language between 12 Pa.C.S. Ch. 29 and Chapter 30 of the Job Enhancement Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Chapter 30 of the Job Enhancement Act.

(iii) Subparagraph (ii) does not apply to any of the following:

(A) The addition of the definitions of "business enterprise" and "medical facility" in 12 Pa.C.S. 2902.

(B) The addition of 12 Pa.C.S. 2905(a) and (c).

(C) The following provisions in the addition of 12 Pa.C.S. 2906:

(I) Subsection (c)(3), (4) and (8).

(II) The introductory paragraph of subsection (e).

(D) The following provisions in the addition of 12 Pa.C.S. 2911:

(I) The introductory paragraph of subsection (a).

(II) Paragraphs (2), (3), (4) and (5) of subsection (a).

(E) The addition of 12 Pa.C.S. 2912.

5. Appropriation to Base Retention and Conversion
Pennsylvania Action Committee (Repealed).

2004 Repeal Note. Section 5 was repealed April 1, 2004, P.L.163, No.22, effective immediately.

2004, FEBRUARY 19, P.L.143, NO.14

3. Construction and application of law.

In applying and construing 12 Pa.C.S. Ch. 53, comments or reports of the type referred to in 1 Pa.C.S. 1939 shall control in the event of a conflict between such comments or reports and the policy of uniformity provided under 1 Pa.C.S. 1927.

Explanatory Note. Act 14 added Chapter 53 of Title 12 and amended section 3930 of Title 18.

4. Misappropriations occurring prior to Act 14.

This act shall not apply to misappropriation occurring prior to the effective date of this act, including a continuing misappropriation that began prior to the effective date of this act and which continues to occur after the effective date of this act.

2004, NOVEMBER 30, P.L.1708, NO.218

6. Applicability.

The following shall apply:

(1) In order to facilitate the repair or rehabilitation of existing water and wastewater systems, the Commonwealth shall, by December 31, 2005, incur not less than \$50,000,000 nor more than \$100,000,000 of additional debt from the debt authorized under the act of March 16, 1992 (P.L.10, No.5), known as the Small Water Systems Assistance Act, and approved by the electorate at the April 28, 1992, General Election. The additional debt shall be incurred by the issuance of general obligation bonds issued in accordance with section 17 of the act of March 1, 1988 (P.L.82, No.16), known as the Pennsylvania Infrastructure Investment Authority Act.

(2) Proceeds from the sale of bonds required by paragraph (1) shall be transferred to the Pennsylvania Infrastructure Investment Authority.

(3) The Pennsylvania Infrastructure Investment Authority shall use the proceeds from the sale of bonds required by paragraph (1) to finance projects of existing water and wastewater systems which, when complete, do any of the following:

(i) Repair, rehabilitate or modernize existing water or wastewater systems to meet environmental or public health standards.

(ii) Eliminate existing combined or sanitary wastewater overflow problems.

(iii) Construct water or wastewater infrastructure to improve public health or eliminate environmental concerns.

(iv) Construct wastewater infrastructure utilizing nutrient reduction technology.

Explanatory Note. Act 218 amended or added sections 3402, 3404, 3405 and 3406 and Chapter 39 of Title 12.