

No. 1985-104

AN ACT

SB 927

Amending the act of July 2, 1984 (P.L.545, No.109), entitled "An act establishing a loan program for capital development projects; providing for the use of funds made available under the Appalachian Regional Development Act of 1965 and the Public Works and Economic Development Act of 1965; providing for loans, loan guarantees and other programs for capital development projects of small businesses; creating the Capital Loan Fund; providing standards for and requirements of the program; and making appropriations," increasing the amounts of Class III loans; and providing for apparel industry loans and for the establishment and operation of an apparel industry loan board.

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

Section 1. Section 2 of the act of July 2, 1984 (P.L.545, No.109), known as the Capital Loan Fund Act, is amended to read:

Section 2. Definitions.

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

"Appalachian Regional Commission." The Appalachian Regional Commission created and established by the Appalachian Regional Development Act.

"Appalachian Regional Development Act." The Appalachian Regional Development Act of 1965 (40 U.S.C. App. § 1 et seq.), as amended.

"*Apparel industry loans.*" *Loans made under the provisions of this act to manufacturers of apparel products.*

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

"Area loan organization" or "organization." A local development district of the Appalachian Regional Commission, an industrial development corporation 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 or designated by the secretary as possessing an acceptable loan review committee, professional staff support and such other qualifications necessary to evaluate and administer loans made under the provisions of this act.

"*Board.*" *The Apparel Industry Loan Board.*

"Capital development project" or "project." Land, buildings, equipment and machinery and working capital which is acquired, constructed, renovated or used by a small business enterprise as part of a for-profit project or venture not of a mercantile or services-related nature, except that

small business enterprises shall include international export-related services and international export-related mercantile ventures or advanced technology and computer-related services and mercantile ventures which will increase Pennsylvania's national or international market shares.

"Class I loans." Loans made under the provisions of this act, utilizing funds made available to the department under the Appalachian Regional Development Act of 1965 (40 U.S.C. § 302).

"Class II loans." Loans made under the provisions of this act, utilizing funds made available to the department under the Public Works and Economic Development Act of 1965 (42 U.S.C. § 3121 et seq.).

"Class III loans." All loans made under the provisions of this act other than Class I [or], Class II *or apparel industry* loans.

"Department." The Department of Commerce.

"Fund." The Capital Loan Fund created and established by this act.

"Public Works and Economic Development Act." The Public Works and Economic Development Act of 1965 (42 U.S.C. § 3121 et seq.), as amended.

"Secretary." The Secretary of Commerce.

"Small business enterprise." A for-profit corporation, partnership or proprietorship which[**together with its parents, affiliates and subsidiaries, employs, in the aggregate, less than 50 full-time employees**] *is small enough to be aided by assistance provided under this act*, including small business enterprises located in small business incubator facilities.

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

Section 2. Section 4(c) of the act is amended and the section is amended by adding a subsection to read:

Section 4. Eligibility for loans; terms and conditions.

* * *

(c) Class III loans.—

(1) The secretary may make advances from the fund, subject to the terms, conditions and restrictions provided under this act, to area loan organizations for the purpose of making loans to small business enterprises for capital development projects which demonstrate a substantial likelihood of providing long-term increases in net new employment opportunities: Provided, however, That no loans shall be made which would do any of the following:

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

(ii) Supplant funding that is otherwise available expeditiously from private sector sources on commercially reasonable terms.

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

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

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

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

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

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

(2) Loans may be made in an amount not exceeding [20%] 50% of the total project cost, or [\$50,000] \$200,000, whichever is less: Provided, however, That no loans shall be made which will exceed \$15,000 for each new employment opportunity created by the project.

(3) All loans shall be secured by lien positions on collateral at the highest level of priority which can accommodate the borrower's ability to raise sufficient debt and equity capital and be made for such period and shall bear such interest as may be determined by the area loan organization with the approval of the secretary: Provided, however, That:

(i) The term of any loan shall not exceed five years for machinery and equipment and working capital loans or ten years for land and building loans.

(ii) The interest rate shall in no case be less than 5%.

(iii) The secretary may defer interest and principal payments at his discretion.

(4) Funds appropriated from the Economic Revitalization Fund for fiscal year 1984-1985 shall be allocated to area loan organizations on the basis of the population of the counties they serve.

(5) No Class III loans or other Class III aid may be approved after June 30, 1987.

(d) Apparel industry loans.—

(1) The secretary may make advances from the fund, subject to the terms, conditions and restrictions provided under this act, to area loan organizations for the purpose of making loans to manufacturers of apparel products for capital development projects limited to the modernization, upgrading or replacement of equipment: Provided, however, That no loans shall be made which would do any of the following:

(i) Cause, aid or assist in, directly or indirectly, the relocation of any business operations from one part of this Commonwealth to another, unless there is at least a 15% increase in net employment.

(ii) Supplant funding that is otherwise available expeditiously from private sector sources on commercially reasonable terms.

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

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

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

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

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

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

(2) *Loans may be made in an amount not exceeding 50% of the total project cost, or \$200,000, whichever is less: Provided, however, That no loans shall be made which will exceed \$10,000 for each employment opportunity created or preserved by the project.*

(3) *All loans shall be secured by lien positions on collateral at the highest level of priority which can accommodate the borrower's ability to raise sufficient debt and equity capital and shall be made for such period and shall bear such interest as may be determined by the area loan organization with the approval of the board: Provided, however, That:*

(i) *The term of any loan shall not exceed seven years.*

(ii) *The interest rate shall in no case be less than 3%.*

(iii) *The secretary may defer interest and principal payments at his discretion.*

(4) *No apparel industry loans or other apparel industry aid may be approved after June 30, 1987.*

(5) *A manufacturer of apparel products is not disqualified from seeking Class I, II or III loans because of eligibility to apply for an apparel industry loan: Provided, however, That the loans approved shall not exceed in the aggregate 50% of total project cost, or \$200,000, whichever is less.*

Section 3. Section 5 of the act is amended by adding a subsection to read:

Section 5. Application and administration.

* * *

(d) *Apparel industry loans.—*

(1) *Applications shall be made to the board in the form and manner as the secretary and the board may require.*

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

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

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

(iii) *Number of net employment opportunities created or preserved by the proposed project.*

(iv) *Eligibility of the applicant as a manufacturer of apparel products.*

(v) *Capital needs of the manufacturer of apparel products.*

(vi) *Whether the manufacturer of apparel products will enhance this Commonwealth's national and international market shares.*

(vii) *Conformity or nonconformity of the project, in all respects, to the provisions of this act.*

(3) *Upon approval of the loan application by the board, the board shall forward the application and all supporting documentation to the secretary for review and final approval or disapproval. The secretary shall review each application and supporting documentation to ensure the following:*

(i) *Eligibility of the manufacturer and the project for which loan proceeds will be used.*

(ii) *Creation or preservation of a satisfactory number of net employment opportunities within this Commonwealth.*

(iii) *Compliance with the loan amount limitations provided by this act.*

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

(v) *Conformity of all aspects of the loan transaction with the substantive and procedural provisions of this act and regulations promulgated hereunder.*

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

(4) *All decisions of the secretary regarding the approval or disapproval of loans under this act, including eligibility of business enterprises and loan projects, shall be final. In reaching their decision, the secretary and the board, in addition to the requirements set forth in paragraphs (2) and (3), shall make their decision on the basis of criteria, including, but not limited to:*

(i) *the long-term employment potential resulting from the investment, including projected jobs retained and created over a five-year period;*

(ii) *the competitive market demand for products using such investments;*

(iii) *the anticipated increase in Pennsylvania's share of domestic and international markets captured from out-of-state foreign competitors due to such investments; and*

(iv) *the utilization by the manufacturer of new and advanced technologies in such investments which are likely to permanently enhance the manufacturer's competitive position within its industry or business.*

(5) *The secretary shall, to the extent practicable, notify the board and the applicant manufacturer of final approval or disapproval of the loan application within 30 business days after the receipt of the application. In the case of approval of a loan application, the secretary, upon consultation with the board, shall designate an area loan organization for the project and the secretary shall arrange to draw the loan amount from the*

Capital Loan Fund and advance the sum to the area loan organization. The advance shall be a debt obligation of the organization to the Commonwealth and shall be evidenced by a note or bond issued by the organization in an amount equal to the amount actually advanced and secured in a manner as the secretary shall require. Upon receipt of the advance, the area loan organization shall make the advance available to the manufacturer in the form of a loan transaction, which loan shall be evidenced by a note executed by the manufacturer, be secured in a manner as the board and the secretary shall require, and conform in all respects to the loan package as approved by the board, the organization and the secretary. If the secretary disapproves the application, the board shall be notified, in writing, of the reasons for the disapproval.

(6) All apparel industry loans shall be administered and monitored by the appropriate area loan organization in accordance with policies and procedures prescribed by the secretary. Each area loan organization shall submit reports to the department and to the board as the secretary shall require, but in no case less than twice a year. The report shall show the following:

- (i) Each outstanding loan.*
- (ii) The date approved.*
- (iii) The original principal amount.*
- (iv) The current principal balance.*
- (v) The interest rate.*
- (vi) The purpose for which the loan was made.*
- (vii) An enumeration of any problems or issues which have arisen with regard to each loan.*
- (viii) A statement regarding the progress of the small business enterprise in creating or preserving its requisite number of long-term employment opportunities.*
- (ix) Such other information and documentation as the secretary shall require.*

(7) In the event that a manufacturer shall fail to comply with and 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 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 manufacturer. The penalty shall be payable in installments which the secretary deems appropriate. Immediate notice of penalties and waivers of penalties (with reasons therefor) shall be submitted by the secretary to the Secretary of the Senate and the Chief Clerk of the House of Representatives.

Section 4. The act is amended by adding a section to read:

Section 5.1. Apparel Industry Loan Board.

(a) Establishment.—There is hereby created the Apparel Industry Loan Board.

(b) Composition.—The board shall be composed of nine members appointed by the Governor, including:

(1) A representative from an association of manufacturers of women's and children's apparel.

(2) A representative from an association of manufacturers of men's and boy's clothing.

(3) A representative from an association of manufacturers of knitted apparel.

(4) A representative of an association of contractors producing women's clothes.

(5) A representative of an association of contractors producing outerwear, blouses and children's clothes.

(6) One member from each of the two largest unions representing employees of apparel manufacturers.

(7) Two other members, one of whom to be appointed chairman.

(c) Vacancies.—Vacancies shall be filled in such a way to ensure that members will represent the groups in subsection (b). Members shall serve at the pleasure of the Governor.

(d) Meetings.—The board shall meet at least once each month. Six members of the board shall constitute a quorum. Failure to attend four consecutive meetings will immediately terminate the appointment of such member.

(e) Administration.—The department shall be required to provide any staff assistance the board requires. Board members shall not receive any compensation nor shall they receive expenses for attending meetings of the board.

(f) Powers and duties.—The board shall have the following powers and duties:

(1) Approve applications for apparel industry loans as provided for in this act.

(2) Approve the use of funds, not to exceed 3% of the funds available for apparel industry loans, for the department and area loan organizations to use to provide assistance in the preparation of an application of a loan, technical assistance to a business that requests such assistance or, in the case of area loan organizations, for payment of a fee for arranging a loan transaction.

(3) Prepare a report to be given to the Secretary of the Senate and Chief Clerk of the House of Representatives as specified in section 5.

(4) Ensure that the apparel industry loans approved by the board are having their desired impact and that the funds are being used in accordance with the application approved by the board.

(5) Establish, in consultation with the department, procedures and application forms to be used by those desiring assistance from the board.

Section 5. Sections 6, 8, 9 and 11 of the act are amended to read:

Section 6. Loan guarantees; other programs.

(a) Guarantees; endorsements and sureties.—The secretary may make advances or provide other means of guaranteed payment from the Capital Loan Fund to area loan organizations for the purpose of guaranteeing, endorsing or acting as surety on the bonds, notes, contracts, mortgages or

other obligations of small business enterprises on such terms and conditions and according to such policies and procedures as the secretary may prescribe. Such guarantees, endorsements or sureties may be provided only for those small business enterprises *and manufacturers of apparel products* and in connection with those capital development projects which conform in all respects to the provisions of section 4(c) *or (d)*. Further, area loan organizations and the secretary shall, in reviewing applications for guarantees, endorsements or sureties, base their respective decisions regarding approval or disapproval upon the findings and determinations required under section 5(c).

(b) Grants for loan reserve funds or reimbursing loan losses.—The secretary may provide grants and other financial assistance to area loan organizations for the purpose of establishing loan reserve funds or reimbursing loan losses to commercial banks and other financial institutions in order to encourage the expansion and financing of small business enterprises *and manufacturers of apparel products* in the Commonwealth consistent with the purposes of this act.

Section 8. Reporting and inspection.

(a) Inspection.—Each small business enterprise *and manufacturer of apparel products* which applies for or receives assistance under this act, upon reasonable request of the department or area loan organization, shall permit duly authorized employees of the department and area loan organization to inspect the plant, books and records of the small business enterprise *or the manufacturer of apparel products*.

(b) Updating.—Each small business enterprise *and manufacturer of apparel products* shall update the information given to the department, *board* and area loan organization in the 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 act shall provide the department and the area loan organization with such periodic financial reports as the department or area loan organization may require until such time as the loan is paid off.

Section 9. Nondiscrimination.

No loan or loan guarantee shall be made to a small business enterprise *or manufacturer of apparel products* unless the small business enterprise *or manufacturer of apparel products* certifies to the department, in a form satisfactory to the department, that it shall not discriminate against any employee or against any applicant for employment because of race, religion, color, national origin, sex or age. The small business *or manufacturer of apparel products* 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.

Section 11. Guidelines and regulations.

(a) General rule.—The secretary shall adopt policies, procedures and guidelines and promulgate rules and regulations necessary to carry out this act.

(b) **One-year exemption from review.**—In order to facilitate the speedy implementation of this program, the department shall have the power and authority to promulgate, adopt and use guidelines which shall be published in the Pennsylvania Bulletin. The guidelines shall not be subject to review pursuant to section 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, and, except as provided in subsection (d), shall be effective for a period not to exceed one year from the effective date of this act. *The department shall have the power and authority to promulgate, adopt and use guidelines as provided herein to implement the apparel industry loan program which guidelines shall be effective for a period not to exceed one year unless extended as provided in subsection (d).*

(c) **Expiration of exemption.**—Except as provided in subsection (d), after the expiration of the one-year period, all guidelines shall expire and shall be replaced by regulations which shall have been promulgated, adopted and published as provided by law.

(d) **Exception.**—The General Assembly may provide for an extension of the guidelines adopted pursuant to subsection (b), if the Leadership Committee created pursuant to sections 3 and 4 of the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act, extends the guidelines adopted pursuant to subsection (b).

Section 6. From funds previously appropriated from the Pennsylvania Economic Revitalization Fund to the Capital Loan Fund, the sum of \$4,000,000 is specifically set aside for purposes of providing loans to the apparel industry.

Section 7. This act shall take effect immediately.

APPROVED—The 20th day of December, A. D. 1985.

DICK THORNBURGH