

No. 1996-67

AN ACT

HB 2668

To enhance job creation and economic development by providing for an annual financing strategy, for opportunity grants, for job creation tax credits, for small business assistance and for the Small Business Advocacy Council; conferring powers and duties on various administrative agencies and authorities; further providing for various funds; and making repeals.

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

CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Job Enhancement Act.

Section 102. Intent and purpose.

It is the intent of this act and its purpose shall be:

(1) To create a partnership of State government and private industry to provide resources to enhance business development in this Commonwealth.

(2) To attract major enterprise to this Commonwealth and to secure the expansion or preservation of existing industry within this Commonwealth.

(3) To provide a comprehensive strategy for the Commonwealth to respond to the need for job creation and economic development.

Section 103. 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:

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

“Developer.” Any person, partnership, corporation or other for-profit business entity or any nonprofit corporation that has as a purpose the promotion or construction of industrial development projects and that is engaged in the development of real estate for use by more than one company.

“Export service enterprise.” A person, partnership, corporation or other for-profit business entity that renders more than half of its sales or services to customers outside of this Commonwealth.

“Financing programs.” All of the following programs:

- (1) The Pennsylvania Industrial Development Authority.
- (2) Pennsylvania Economic Development Financing Authority.
- (3) Pennsylvania Minority Business Development Authority Board.
- (4) The Infrastructure Development Program.

- (5) The Opportunity Grant Program.
- (6) The Industrial Sites Reuse Program.
- (7) The Customized Job Training Program.
- (8) The Machinery and Equipment Loan Program.
- (9) The Small Business First Program.
- (10) Job Creation Tax Credit.
- (11) Any other similar program operated by the department.

“Private matching funds.” Any new private investment made by a company or developer in a facility or infrastructure improvement at the site of the enterprise as provided by the department in guidelines under section 702(a).

“Research and development enterprise.” A person, partnership, corporation or other for-profit entity engaged in the discovery of new and the refinement of known substances, processes, products, theories and ideas.

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

CHAPTER 3 ANNUAL FINANCING STRATEGY

Section 301. Annual financing strategy.

(a) Development.—The department shall develop, in consultation with each board which administers a financing program within the department, an annual financing strategy which sets forth in detail the terms and conditions under which the department’s financing programs will be administered during the upcoming fiscal year. In developing the annual financing strategy, the department shall gather input and recommendations from businesses, community leaders and organizations, legislators and private citizens.

(b) Contents.—The annual financing strategy shall include the following:

(1) A financial audit or statement of operations for each financing program.

(2) A narrative description of accomplishments during the preceding fiscal year.

(3) A description of the parameters of operation for the financing programs during the upcoming fiscal year.

(4) A description of the performance measurements and accountability factors to be applied and the performance targets or goals to be met.

(5) A description of long-range planning for the financing programs through the next five fiscal years.

(6) A listing of and details regarding loans, grants or credits approved by the financing programs during the fiscal year and a description of each.

(7) A review of pending projects.

(c) Submission.—The final annual financing strategy shall be presented to the General Assembly by submitting the strategy to the Secretary of the Senate and the Chief Clerk of the House of Representatives and the Chairman of the Appropriations Committee of the Senate and the Chairman of the

Appropriations Committee of the House of Representatives concurrent with the submittal of the annual budget message.

(d) Review.—The General Assembly shall utilize the annual financing strategy in the consideration and development of appropriations and legislation for economic development.

CHAPTER 7 OPPORTUNITY GRANT PROGRAM

Section 701. Establishment of program.

There is established within the department the Opportunity Grant Program for the purpose of securing job-creating economic development opportunities, including the expansion or preservation of existing industry within this Commonwealth.

Section 702. Guidelines.

(a) Development.—The department shall develop written guidelines for the use of the Opportunity Grant Program, which shall address the geographic diversity of funded projects, limits on the amount of funds available for any single project, eligible uses of funds, standards for eligibility and a mechanism for insuring that recipient projects maintain operations within this Commonwealth for an appropriate period of time.

(b) Use.—No projects may be approved until the written guidelines have been completed and copies of the guidelines have been submitted to the General Assembly.

Section 703. Eligibility.

(a) Entities.—The following entities shall be eligible to receive grants from the Opportunity Grant Program:

- (1) Municipalities.
- (2) Industrial development authorities and agencies.
- (3) Municipal or redevelopment authorities.
- (4) Developers engaged in the development of real estate for use by more than one company.
- (5) Companies.

(b) Enterprises.—The following types of enterprises shall be eligible to receive grants from the program:

- (1) An agricultural enterprise.
- (2) An industrial enterprise.
- (3) A manufacturing enterprise.
- (4) A research and development enterprise.
- (5) An export service enterprise.
- (6) An enterprise which would offer a significant economic impact, as determined by the department.

(c) Use.—A grant under this chapter may be used for costs necessary for the development or operation of an eligible project at a specific site in this Commonwealth.

(d) **Limit.**—An applicant may not receive money under this chapter for more than two consecutive fiscal years for the same project.

Section 704. Uses.

(a) **Eligible uses.**—Eligible uses of awards under this chapter include:

- (1) Job training.
- (2) Construction or rehabilitation of infrastructure.
- (3) Acquisition of land, buildings and rights-of-way.
- (4) Construction or rehabilitation of buildings.
- (5) 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.

(b) **Ineligible uses.**—Ineligible uses for awards under this chapter include:

- (1) Refinancing or retirement of existing debt.
- (2) Cost unrelated to expansion or location at a site in this Commonwealth.

Section 705. Requirements.

(a) **Private match.**—Applications for assistance under this chapter must include a written commitment from the applicant to invest private matching funds at the project site. The amount of private matching funds must be at least \$4 for every \$1 of Opportunity Grant Program assistance.

(b) **Economic impact.**—Program applications must identify the economic impact of the project to the region and the estimated impact on State and local revenues.

(c) **Security.**—The department may require a company or developer that receives program assistance to secure a possible penalty obligation under section 706 with a mortgage lien, a letter of credit or other collateral.

Section 706. Penalties.

An eligible entity that fails to create the number of jobs specified in funded application or that fails to inject the required amount of private matching funds into the project shall be liable for a penalty of up to the full amount of the grant plus an additional payment of up to 10% of the amount of the grant unless the penalty is waived by the department because the failure is due to circumstances outside the control of the eligible entity. The penalty shall be payable in one lump sum or in installments, with or without interest, as the department deems appropriate.

CHAPTER 9 JOB CREATION TAX CREDIT

Section 901. 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:

“Base period.” The three years preceding the date on which a company may begin creating new jobs which may be eligible for job creation tax credits.

“Job creation tax credits.” Tax credits for which the department has issued a certificate under this chapter.

“New job.” A full-time job, the average hourly rate, excluding benefits, for which must be at least 150% of the Federal minimum wage, created within a municipality located in this Commonwealth by a company within three years from the start date.

“Start date.” The date on which a company may begin creating new jobs which may be eligible for job creation tax credits.

“Year one.” A one-year period immediately following the start date.

“Year three.” A one-year period immediately following the end of year two.

“Year two.” A one-year period immediately following the end of year one.

Section 902. Eligibility.

In order to be eligible to receive job creation tax credits, a company must demonstrate to the department the following:

- (1) The ability to create the number of jobs required by the department within three years from the start date.
- (2) Leadership in the application, development or deployment of leading technologies.
- (3) Financial stability and the project’s financial viability.
- (4) The intent to maintain operations in this Commonwealth for a period of five years from the date the company submits its tax credit certificate to the Department of Revenue.
- (5) An affirmation that the decision to expand or locate in this Commonwealth was due in large part to the availability of a job creation tax credit.

Section 903. Application process.

(a) Application.—A company must complete and submit to the department a job creation tax credit application.

(b) Creation of jobs.—The applicant must agree to create at least 25 new jobs or to increase the applicant’s number of employees by at least 20% within three years of the start date.

(c) Approval.—If the department approves the company’s application, the department and the company shall execute a commitment letter containing the following:

- (1) A description of the project.
- (2) The number of new jobs to be created.
- (3) The amount of private capital investment in the project.
- (4) The maximum job creation tax credit amount the company may claim.

(5) A signed statement that the company intends to maintain its operation in this Commonwealth for five years from the start date.

(6) Such other information as the department deems appropriate.

(d) Commitment letter.—After a commitment letter has been signed by both the Commonwealth and the company, the company shall receive a job creation tax credit certificate and filing information.

Section 904. Tax credits.

(a) Maximum amount.—A company may claim a tax credit of \$1,000 per new job created up to the maximum job creation tax credit amount specified in the commitment letter.

(b) Determination of new jobs created.—

(1) New jobs shall be deemed created in year one to the extent that the company's highest employment quarter during year one exceeds the company's average monthly employment level during the company's base period.

(2) New jobs shall be deemed created in year two to the extent that the company's highest employment quarter during year two exceeds the company's highest employment quarter during year one.

(3) New jobs shall be deemed created in year three to the extent that the company's highest employment quarter during year three exceeds the company's employment quarter during year two.

(c) Applicable taxes.—A company may apply the tax credit to 100% of the company's State corporate net income tax, capital stock and franchise tax or the capital stock and franchise tax of a shareholder of the company if the company is a Pennsylvania S corporation, gross premiums tax, gross receipts tax, bank and trust company shares tax, mutual thrift institution tax, title insurance company shares tax, personal income tax or the personal income tax of shareholders of a Pennsylvania S corporation or any combination thereof.

(d) Tax credit term.—A company may claim the job creation tax credit for each new job created, as approved by the department, for a period determined by the department, but not to exceed five years from the date the company first submits a job creation tax credit certificate to the Department of Revenue.

(e) Maximum.—The total amount of all tax credits approved in a year under this chapter shall not exceed \$15,000,000.

Section 905. Prohibitions.

(a) Prohibitions.—The following actions with regard to job creation tax credits are prohibited:

(1) Approval of jobs that have been created prior to the start date.

(2) Approval for a company which is relocating operations from one municipality in this Commonwealth to another unless special circumstances exist and the municipality that is losing the existing jobs has an opportunity to submit comments prior to action by the department. If the department approves the tax credits, the company must commit to

preserving the existing employees, and the credit shall apply only to the new jobs.

(3) The assignment, transfer or use of credits by any other company.

(b) Allocations.—Twenty-five percent of all tax credits approved in any fiscal year shall be available to companies with fewer than 26 employees. Section 906. Penalties.

(a) Failure to maintain operations.—A company which receives job creation tax credits and fails to substantially maintain existing operations and the operations related to the job creation tax credits in this Commonwealth for a period of five years from the date the company first submits a job creation tax credit certificate to the Department of Revenue shall be required to refund to the Commonwealth the total amount of credit or credits granted.

(b) Failure to create jobs.—A company which receives job creation tax credits and fails to create the approved number of new jobs within three years of the start date will be required to refund to the Commonwealth the total amount of credit or credits granted.

(c) Waiver.—The department may waive the penalties outlined in subsections (a) and (b) if it is determined that a company's operations were not maintained or the new jobs were not created because of circumstances beyond the company's control. Such circumstances include natural disasters, unforeseen industry trends or a loss of a major supplier or market.

CHAPTER 13 SMALL BUSINESS FIRST PROGRAM

Section 1301. 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 or entity that adds value by subjecting one or more farm commodities to a process of manufacture, development or preparation for sale; a person or entity that converts a farm product into a marketable form, including, but not limited to, livestock by slaughtering, fruits and vegetables by canning and freezing and forest products by secondary processing.

“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.” 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” or “project.” Land, buildings, equipment and machinery and working capital which is acquired, constructed, renovated or used by a small business enterprise:

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

(2) To bring a small business enterprise into compliance with Federal or State environmental laws or regulations or to complete an approved remediation project or to permit the small business enterprise to adopt generally acceptable pollution prevention practices.

(3) To provide assistance to small business enterprises that are recyclers of municipal or commercial waste or that are manufacturers using recycled municipal or commercial waste materials.

(4) To assist a small business enterprise with defense conversion activities.

(5) For the manufacture of products to be exported out of the United States by a small business enterprise as part of a for-profit project or venture 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, which will increase this Commonwealth’s national or international market shares.

“EDA loans.” Loans made under this act, 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.).

“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.

“Hospitality industry project.” A for-profit project or venture that involves a small business enterprise which operates a hotel, motel or other lodging facility and which employs at least five full-time equivalent employees at the time an application is submitted to the department for financing. The term also includes a for-profit project or venture that involves a small business enterprise which operates a restaurant or food service operation open to the public which has been in continuous operation for at least five years and employs at least five full-time equivalent employees at the time an application is submitted to the area loan organization for financing.

“Small business enterprises.” A for-profit corporation, partnership or proprietorship which meets the eligibility requirements established by the department. The term shall include, but is not limited to, small business enterprises located in small business incubator facilities, small business enterprises which are agricultural processors and small business enterprises which manufacture apparel products.

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

Section 1302. Small Business First Fund.

(a) Creation.—There is hereby created a special revolving fund in the State Treasury, to be known as the Small Business First Fund, to which shall be credited all program appropriations made by the General Assembly for this chapter, 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 statute, regulation or program, all proceeds from loan repayments and any and all other deposits, payments and contributions from any other source made available to the department for the purposes of this chapter.

(b) Accounts.—Except as otherwise provided in this section or as otherwise required by the Economic Development Administration for use of Federal funds under the Public Works and Economic Development Act of 1965, all moneys held in the Small Business First Fund as of the effective date of this chapter shall be consolidated into one account, and all previously created account categories based on the loan classes that were formerly delineated in the act of July 2, 1984 (P.L.545, No.109), known as the Capital Loan Fund Act, shall be eliminated. After the effective date of this chapter, within the Small Business First Fund, there shall be accounts as described in this act, including an account for Federal accounting purposes. After consolidation of the accounts, all moneys held in the Small Business First Fund shall be available for use in accordance with this chapter.

(c) Requisitions.—The department shall requisition from the Small Business First Fund such amounts as are necessary to provide adequate funds for payments under this chapter. Moneys available in the Small Business First Fund may be used by the department and by area loan organizations, as approved by the department, for administrative costs. Area loan organizations may establish and charge reasonable processing fees with the approval of the department. When and as the amounts so allocated and appropriated by the department as loans are repaid to the department pursuant to the terms of the bonds, notes or other agreements made and entered into by the department, the department shall pay such amounts into the Small Business First Fund.

(d) Credits to Small Business First Fund.—All appropriations, deposits and contributions made to the Small Business First Fund shall be credited in full to the Small Business First Fund and earnings on the moneys held in the Small Business First Fund shall also be credited to the Small Business First Fund for the purposes of this chapter.

(e) Loans receivables.—The department shall have authority to 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, provided that the funds so raised shall be used by the department solely for:

- (1) The making of new and additional loans in accordance with the purposes of this chapter.
- (2) Costs associated with the financing.

Section 1303. Eligibility for and terms and conditions of loans.

(a) EDA loans.—Eligibility requirements for EDA loans shall be established by the department and shall be consistent with the requirements imposed 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) Terms and conditions.—

(1) The department may make advances from the Small Business First Fund, subject to the terms, conditions and restrictions provided under this chapter, to area loan organizations for the purpose of making loans to eligible small enterprises for capital development projects which demonstrate a substantial likelihood of creating or preserving employment opportunities. All loans shall be limited to projects that demonstrate the creation or preservation of one job for every \$25,000 received from the Small Business First Fund.

(2) No loans shall be made which would do any of the following:

(i) Cause, aid or assist in, directly, 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.

(ii) Refinance any portion of the total project cost or other existing loans or debt.

(iii) Finance projects located outside the geographic boundaries of this Commonwealth.

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

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

(3) All loans shall carry an interest rate and term and 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.

Section 1304. Application and administration.

(a) EDA loans.—Application and administration procedures for EDA loans shall be established by the department 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) General procedures.—

(1) The department may designate an area loan organization to receive loan applications from small business enterprises and administer loan portfolios in each area of this Commonwealth. Applications shall be made to the area loan organization in the form and manner as the department and the area loan organization may require.

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

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

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

(v) Conformity or nonconformity of the project, in all respects, to the provisions of this chapter.

(vi) Any additional criteria established by the department.

(3) Upon approval of the loan application by the area loan organization, the area loan organization shall forward the application and all supporting documentation which the department shall require, including a copy of the proper resolution of the governing body of the area loan organization, to the department for review and final approval or disapproval of loans under this act shall be final.

(4) The department shall notify the area loan organization and the applicant of the department's final approval or disapproval of the loan application within 30 business days after the receipt of a completed application. In the case of approval of a loan application, the department shall arrange to draw the loan amount from the Small Business First Fund and advance the sum to the area loan organization. The advance shall be a debt obligation of the loan organization in an amount equal to the amount actually advanced and secured in a manner as the department shall require. Upon receipt of the advance, the area loan organization shall make the advance available to the small business enterprise in the form of a loan transaction, which loan shall be evidenced by a note executed by the small business enterprise, secured in a manner as the area loan organization and the department shall require and conform in all respects to the loan package as approved by the area loan organization and the department.

(5) All loans shall be administered and monitored by the appropriate area loan organization in accordance with policies and procedures prescribed by the department. Each area loan organization shall submit annual reports to the department as the department shall require. 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 employment opportunities.
- (ix) Such other information and documentation as the department shall require.

(6) In the event that a small business enterprise shall fail to create or preserve the number of employment opportunities specified in its approved application, the department may 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. The penalty may be waived by the department because the failure is due to circumstances outside the control of the small business enterprise. The penalty may be payable in one lump sum or in installments, with or without interest, as the department deems appropriate.

(7) The department may take title by foreclosure to a project where acquisition is necessary to protect a loan previously made under this act by the department. The department may pay all costs arising out of the foreclosure and acquisition from moneys held in the Small Business First Fund. The department may, in order to minimize financial losses and sustain employment, lease the project. The department may also purchase first mortgages and make payments on first mortgages on any project where purchase or payment is necessary to protect a loan previously made by the department under this chapter and may sell, transfer, convey and assign such first mortgages, or any payments thereon, which shall be withdrawn from the Small Business First Fund, and any moneys derived from the sale of any first mortgages shall be deposited by the department in the Small Business First Fund.

Section 1305. Other programs.

The department 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 consistent with the purposes of this chapter.

Section 1306. Annual financing strategy.

The department shall set forth in the annual financing strategy submitted to the General Assembly those policies, procedures and guidelines necessary to carry out the provisions of this chapter.

Section 1307. Reporting and inspection.

(a) Inspection.—Each small business enterprise which applies for or receives assistance under this chapter, upon reasonable request of the department or area loan organization, shall permit authorized employees of

the department and area loan organization to inspect the plant, books and records of the small business enterprise.

(b) Updating.—Each small business enterprise shall update the information given to the department 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 chapter 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.

(d) Financial and performance audits.—Each year, each area loan organization shall submit to the department, at the area loan organization's expense, an independent financial audit of the area loan organization. In the event that the audit reveals misconduct of a material nature on the part of the area loan organization, the department may take such action as it deems appropriate.

Section 1308. Capital Loan Fund.

(a) Transfer of existing funds.—As of the effective date of this chapter, 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 handled in accordance with section 1302. As of the effective date of this chapter, the Capital Loan Fund shall be terminated as a separate account in the State Treasury.

(b) Transfer of future funds.—Any and all funds received by the department for loans made under the act of July 2, 1984 (P.L.545, No.109), known as the Capital Loan Fund Act, regardless of whether the loans were made before or after the effective date of this chapter, as well as all other funds received by the department in relation to projects which received loan funds under the Capital Loan Fund, shall be returned to the Small Business First Fund established by section 1302.

Section 1309. Air Quality Improvement Fund; Storage Tank Loan Fund; and Recycling Incentive Development Account.

As of the effective date of this chapter, 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 Small Business First Fund and shall thereafter be handled in accordance with the provisions of section 1302 with the proviso that the funds shall be maintained and accounted for in a separate account of the Small Business First Fund and shall be available for use only for those capital development projects which will bring a small business enterprise into compliance with Federal or State environmental laws or regulations or which will permit the small business enterprise to adopt generally acceptable pollution prevention practices. Any transfers of moneys from the Department of Environmental Protection to the Small Business First Fund after the effective date of this chapter shall likewise be deposited into

the separate account and be available only for the capital development projects described in this section. The department shall report annually to the Department of Environmental Protection on the status of the account and the loans made with the funds. As of the effective date of this chapter, the Air Quality Improvement Fund, the Storage Tank Loan Fund and the Recycling Incentive Development Account shall be terminated as separate accounts within the State Treasury.

Section 1310. Transitional provisions.

The following eligibility requirements and eligible uses shall apply to all requests for funding received after this chapter becomes effective and before submission of the first annual financing strategy:

(1) A small business enterprise with 100 full-time employees or less that proposes to undertake a capital development.

(2) (i) The maximum loan amount for land, buildings and machinery and equipment is \$200,000 or 50% of the total eligible project costs, whichever is less. The maximum loan amount for working capital is \$100,000 or 50% of the total eligible project costs, whichever is less.

(ii) Loans used for real estate shall have a repayment period of up to ten years. Loans used for machinery and equipment shall have a repayment period of up to seven years. Loans used for working capital shall have a repayment period of up to three years. In projects where two or more uses of funds are planned, the loan terms may be blended.

(iii) Interest rates shall be fixed at 5%.

(iv) All loans must be adequately secured.

(3) (i) Applications for assistance under the Capital Loan Fund Act which have been approved prior to the effective date of this chapter will be processed in accordance with the act of July 2, 1984 (P.L.545, No.109), known as the Capital Loan Fund Act. Applications for assistance which have been received but which have not been approved prior to the effective date of this chapter will be evaluated and processed in accordance with this chapter.

(ii) Applications for assistance under section 7.13 of the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, section 709 of the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act, and the Recycling Incentive Development Account which have been approved prior to the effective date of this chapter shall be processed in accordance with those respective provisions. Applications for assistance which have been received but which have not been approved prior to the effective date of this chapter shall be evaluated and processed in accordance with this chapter.

CHAPTER 17 SMALL BUSINESS ADVOCACY COUNCIL

Section 1701. Legislative intent.

The General Assembly finds and declares as follows:

(1) There are in excess of 250,000 small businesses throughout this Commonwealth which are potentially affected by the laws, regulations, policies and programs put forth by the Commonwealth.

(2) The intent of this chapter is to ensure that the impact on small business of certain Commonwealth policies and programs, laws and regulations receive due consideration and to ensure that the small business community and its experts have the opportunity to provide comment to the department regarding these matters.

Section 1702. 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 Advocacy Council established under this chapter.

“Small business.” A person, sole proprietorship, partnership, corporation, association or other business entity that employs fewer than 25 employees.

Section 1703. Small Business Advocacy Council.

(a) Establishment.—The Small Business Advocacy Council is established in order to assist with developing policies and regulations that might affect small business in this Commonwealth. The council shall provide advice relating to the nature of small business practices and problems in this Commonwealth and provide a review of existing policies and regulations which are relevant to small business.

(b) Representative membership.—The council shall consist of 13 members. Members must have a background in small business practices and problems. They must represent present owners and operators of small businesses in this Commonwealth, members of the academic community who have expertise regarding small business practices and problems and professionals who specialize in representing businesses with fewer than 25 employees.

(c) Appointments.—Four of the council members shall be appointed by the Governor. The secretary shall serve ex officio. Two members shall be appointed by each of the following:

- (1) The President pro tempore of the Senate.
- (2) The Minority Leader of the Senate.
- (3) The Speaker of the House of Representatives.
- (4) The Minority Leader of the House of Representatives.

(d) Term.—Each member of this council shall serve for two years.

(e) Organization.—

- (1) The secretary shall serve as chairperson.
- (2) The council may adopt bylaws or procedural guidelines it deems necessary to accomplish its purposes.

(3) Recommendations, positions and other actions of the council shall require approval by a majority of its members.

(f) Administrative assistance.—The department shall provide appropriate administrative and technical support needed by the council in order to accomplish its purposes. The department shall publish notices of meeting dates, times, locations and a list of topics to be discussed no less than 14 days before the meeting in accordance with the notice requirements set forth in the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act.

(g) Mailing list.—The department shall maintain a mailing list of persons who have requested specific notification of meetings and activities of the council. The department shall name a deputy secretary to attend council meetings and serve as the public's liaison to seek and obtain information relating to the council's work.

(h) Access to documents.—The council may request and shall be provided with officially promulgated regulatory and nonregulatory documents of any department regulating or undertaking the regulation of small business in this Commonwealth which the council deems necessary to carry out its purpose.

(i) Expenses.—Members of the council shall be reimbursed for their travel, room and board expenses incurred when attending council meetings. Section 1704. Regulatory review.

(a) Notification.—Every six months, the department shall provide to the council a list of prospective regulations being considered or developed by any administrative agency which may affect small businesses of this Commonwealth to the extent that such prospective regulations are known to the secretary.

(b) Conference.—Upon the council's request, the department shall convene representatives of an administrative agency to meet with the council to confer on that administrative agency's regulatory proposals and policy initiatives which might affect small businesses of this Commonwealth.

(c) Written comments.—Written comments regarding the council's position on the proposed regulations shall be provided to the department for transmittal to the administrative agency considering the prospective regulations. These comments shall contain an impact statement and any other information the council deems important for the public to make an informed opinion on the proposals.

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

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

CHAPTER 51
MISCELLANEOUS PROVISIONS

Section 5101. Transfer of Sunny Day Fund loans and commitments.

On July 1, 1996, all outstanding loans closed with Sunny Day Funds and approved Sunny Day Fund loan commitments which have not closed prior to July 1, 1996, along with sufficient funds to provide for the loans, and all documentation and collateral security associated with all the loans shall be transferred to the Pennsylvania Industrial Development Authority. All amounts received or receivable on account of the loans and collateral security shall be revenues of the Pennsylvania Industrial Development Authority and shall be used for any purpose permitted under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act. Any approved Sunny Day Fund loan commitments which have been closed prior to July 1, 1996, and are transferred to the Pennsylvania Industrial Development Authority shall be closed by the authority with the transferred funds in accordance with the provisions of Chapter 1 of the act of July 1, 1985 (P.L.120, No.32), known as the Sunny Day Fund Act. In the event that any loan commitment is unable to be closed, all transferred funds shall remain with the Pennsylvania Industrial Development Authority. The ability of the Pennsylvania Industrial Development Authority to close the loans and to extend or restructure any outstanding loans closed under the Sunny Day Fund Act shall not be affected by the limitations of the Pennsylvania Industrial Development Authority Act.

Section 5102. Transfer of Pennsylvania Capital Loan Fund, accounts, assets and liabilities.

(a) Transfer of existing funds.—As of the effective date of this chapter, 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 handled in accordance with the provisions of this act. As of the effective date of this chapter, the Capital Loan Fund shall be terminated as a separate account in the Treasury Department.

(b) Transfer of future funds.—Any and all funds received by the department for loans made under the act of July 2, 1984 (P.L.545, No.109), known as the Capital Loan Fund Act, regardless of whether the loans were made before or after the effective date of this chapter, as well as all other funds received by the department in relation to projects which received loan funds under the Capital Loan Fund Act shall be returned to the Small Business First Fund established by this act.

Section 5103. Transfer of Air Quality Improvement Fund, Storage Tank Loan Fund and Recycling Incentive Development Account.

As of the effective date of this chapter, all funds, accounts, assets, encumbrances and liabilities located in or associated with Air Quality Improvement Fund, the Storage Tank Loan Fund and the Recycling Incentive

Development Account shall be transferred to the Small Business First Fund and shall thereafter be handled in accordance with the provisions of this act, provided the funds shall be maintained and accounted for in a separate account of the Small Business First Fund and shall be available for use only for those capital development projects which will bring a small business enterprise into compliance with Federal or State environment laws or regulations or which will permit the small business enterprise to adopt generally acceptable pollution prevention practices. Any transfers of moneys from the Department of Environmental Protection to the Small Business First Fund after the effective date of this chapter shall likewise be deposited into the separate account and be available only for capital development projects. The department shall report annually to the Department of Environmental Protection on the status of the separate account and the loans made with funds in the account. As of the effective date of this chapter, the Air Quality Improvement Fund, the Storage Tank Loan Fund and the Recycling Incentive Development Account shall be terminated as separate accounts within the Treasury Department.

Section 5104. Transitional provisions.

(a) Capital Loan Fund applications.—Applications for assistance under the act of July 2, 1984 (P.L.545, No.109), known as the Capital Loan Fund Act, which have been approved by the department prior to the effective date of this chapter shall be processed in accordance with the provisions of the Capital Loan Fund Act. Applications for assistance which have been received by the department but which have not been approved prior to the effective date of this chapter shall be evaluated and processed in accordance with the provisions of this chapter.

(b) Air Quality Improvement Fund, Storage Tank Loan Fund and Recycling Incentive Development Account applications.—Applications for assistance made under section 7.13 of the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, section 709 of the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act, and made to the Recycling Incentive Development Account, which have been approved by the Secretary of Environmental Protection or the Department of Environmental Protection prior to the effective date of this chapter shall be processed in accordance with these respective statutory provisions. Applications for assistance which have been received by the Department of Environmental Protection but which have not been approved prior to the effective date of this chapter shall be evaluated and processed in accordance with Chapter 13.

Section 5105. Power and authority of the Pennsylvania Economic Development Financing Authority.

In addition to the powers set forth in section 6.3 of the act of August 23, 1967 (P.L.251, No.102), known as the Economic Development Financing Law, the Pennsylvania Economic Development Financing Authority established under that act shall have the power and is hereby authorized to

issue its limited obligation revenue bonds and other types of financing, as in the judgment of the financing authority shall be necessary, to provide sufficient funds for any activity the department or the Pennsylvania Industrial Development Authority is permitted to take with respect to the loan portfolios subject to their respective administrative authority as set forth in section 1302. Bonds authorized to be issued under this section shall not be a debt or liability of the Commonwealth and shall not create or constitute any indebtedness, liability or obligation of the Commonwealth except to the extent the bonds are secured by the pledge of loan portfolios. Bonds authorized to be issued under this section shall be payable solely from the revenues or funds pledged or available for their repayment.

Section 5106. Public record exemption.

Financial statements, business plans and marketing information submitted to the department by companies seeking or receiving financial assistance under any of the department's financing programs are not public records for purposes of the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.

Section 5107. Repeals.

(a) The following acts and parts of acts are repealed:

Act of July 2, 1984 (P.L.545, No.109), known as the Capital Loan Fund Act.

Act of July 2, 1984 (P.L.568, No.113), known as the Employee-Ownership Assistance Program Act.

Chapter 1 of the act of July 1, 1985 (P.L.120, No.32), known as the Sunny Day Fund Act.

Section 709 of the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act.

(b) The following acts and parts of acts are repealed insofar as they are inconsistent with this act:

The second sentence of section 5.2(a) and section 13.1 of the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

Section 10 of the act of December 20, 1985 (P.L.492, No.116), known as the Customized Job Training Act.

Section 702(h) of the act of May 19, 1995 (P.L.4, No.2), known as the Land Recycling and Environmental Remediation Standards Act.

Chapter 7 of the act of June 27, 1996 (P.L.403, No.58), known as the Community and Economic Development Enhancement Act.

Section 5108. Effective date.

This act shall take effect July 1, 1996, or immediately, whichever is later.

APPROVED—The 29th day of June, A.D. 1996.

THOMAS J. RIDGE