

No. 1984-105

AN ACT

SB 1433

Establishing a business infrastructure development program for making grants and loans for infrastructure necessary to complement industrial or commercial investment by private companies; prescribing requirements of and conditions for grants and loans; and making an appropriation.

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

Section 1. Short title.

This act shall be known and may be cited as the Business Infrastructure Development Act.

Section 2. Definitions.

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

“Department.” The Department of Commerce.

“Infrastructure improvements.” The construction, rehabilitation or repair of drainage systems; energy facilities (power generation and distribution); fire safety facilities (excluding vehicles); sewer systems (pipe, treatment); transportation directly affecting the site of the proposed private investment, including roads, sidewalks, bridges, rail, port, river, airport or pipeline (excluding vehicles); waste disposal; and water supply (storage, treatment and distribution).

“Local sponsor.” Any municipality, any industrial and commercial authority organized pursuant to, or industrial development company as certified by the department pursuant to the act of August 23, 1967 (P.L.251, No.102), known as the Industrial and Commercial Development Authority Law; any council of government organization or any multimunicipal agency organization created pursuant to the act of July 12, 1972 (P.L.762, No.180), referred to as the Intergovernmental Cooperation Law; any municipal authority organization pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945; any redevelopment authority organized pursuant to the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law; and any local development district of the Appalachian Regional Commission.

“Municipality.” Any county, city, borough, incorporated town, township or home rule municipality.

“Private company.” Any agricultural, industrial, manufacturing or research and development enterprise or enterprises, as defined in section 3 of the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

“Private match.” Any new private investment by the private company in land, buildings and depreciable fixed assets and infrastructure improvements at the project site of the infrastructure improvements funded under this act.

“Publicly owned property.” Property which is accessible to the general public and is not under the control of a private firm.

“Secretary.” The Secretary of Commerce.

“Small community.” A municipality with a population of 50,000 or less.

Section 3. Establishment of program.

There is hereby established, under the direction of the department, a program to be known as the Business Infrastructure Development Program for the purpose of making grants or loans to local sponsors in order to install specific infrastructure improvements necessary to complement industrial investment by private companies which increase Pennsylvania’s share of domestic and international commerce and create net new jobs.

Section 4. Grant and loan procedure.

(a) Private company commitments.—An application for a grant or loan shall be initiated by a private company which shall submit a letter of intent or signed contractual agreement to locate, expand or build a facility to a local sponsor whose jurisdiction includes, at least in part, the site of the facility. The letter of intent shall include:

(1) A commitment that the proposed facility will create a minimum of ten net new full-time equivalent jobs, will create at least a 4% increase in full-time equivalent jobs in the case of expansion of an enterprise already located at the site, or at least a 25% increase in full-time equivalent jobs pursuant to section 7(h) and will create at least one net new full-time equivalent job for every \$15,000 either loaned or granted for the project.

(2) A statement of intention to operate the facility for a minimum of five years.

(3) A statement that the specific infrastructure improvements are necessary for the efficient and cost-effective operation of the proposed business or industry, together with supporting financial and engineering documentation.

(4) A notarized statement of willingness to grant the local sponsor a lien on the facility for which the infrastructure is being provided, up to the amount of the cost of the loan, including principal and interest due and owing to the date of foreclosure and any penalty imposed by the secretary, required to provide the infrastructure, which lien may be foreclosed in the event that the private company fails to operate in the facility for at least five years.

(b) Application to the department.—Upon receipt of the request for assistance from a private company, the local sponsor may apply to the department for a loan or grant. The application from the local sponsor shall include, but not be limited to:

(1) A statement of the purpose of the proposed loan or grant, including a list of eligible items and the cost of each.

(2) A statement showing the sources of funding for the entire project, including the private company’s investment in the project and any public and other private sources of funding.

(3) A contractual agreement or signed letter of intent from a private firm, as specified in this section.

(4) Evidence that there will be a private match in the following amounts:

(i) At least \$2 for every \$1 of State assistance, if the assistance requested is \$500,000 or less.

(ii) At least \$3 for every \$1 of State assistance, if the assistance requested is greater than \$500,000 but not greater than \$1,000,000.

(iii) At least \$4 for every \$1 of State assistance if the assistance requested is greater than \$1,000,000 but not greater than \$1,500,000.

(5) Demonstration that the private firm is financially sound and is likely to fulfill the commitments made in its letter of intent.

(6) A proposed timetable for the provision of the infrastructure improvements.

(7) Evidence that the project will be expeditiously carried out and completed as planned.

(8) A demonstration that insufficient local capital improvement funds at reasonable rates and terms are available within the necessary time to provide the needed infrastructure improvement on public property. This includes local funds available through issuance of bonds or other means, State funds available through existing programs and available Federal program funds such as community development block grant funds, urban development action grant funds and economic development administration funds.

(9) A demonstration that insufficient private funds are available at reasonable rates and terms within the necessary time to fund infrastructure improvements on property owned by the private company.

(10) Evidence of consistency with local and areawide economic development plans where such exist.

(c) Grant and loan evaluation.—The department shall consider grant and loan applications based on the following criteria:

(1) The number of net new full-time equivalent jobs that will be provided and the amount of additional State and local tax revenue that will be directly generated by the private company's new or expanded industrial or commercial investment.

(2) The degree of economic distress in the jurisdiction of the local sponsor and, when appropriate, the surrounding area, as measured by rates of unemployment, income levels and other criteria as the department shall establish by rules or guidelines.

(3) The ability to repay the interest and principal, in the case of a loan.

(4) The increase in the manufacturing base of the Commonwealth.

Section 5. Loan repayment.

The department shall establish such guidelines, rules and regulations for the repayment of funds loaned pursuant to this act as may be necessary. These provisions shall include, but not be limited to, the following:

(1) Funds may be lent for a maximum of ten years or the estimated useful life of the property, as established by the United States Department of Treasury, whichever is greater.

(2) The rate of interest charged by the department for infrastructure not on publicly owned property shall be no less than the interest rate on the bonds sold pursuant to the act of July 2, 1984 (P.L.512, No.104), known as the Pennsylvania Economic Revitalization Act.

(3) For all infrastructure improvements funded through this act which occur on publicly owned property, repayment of funds loaned will involve only the principal amount loaned and no interest will be charged against the funds made available.

(4) No loan shall exceed \$1,500,000.

Section 6. Grants.

Grants for infrastructure on publicly owned property necessary to complete eligible projects, consistent with the criteria set forth in this act, shall be permitted only in Enterprise Development Areas designated as such by the Secretary of the Department of Community Affairs, or in those municipalities which are experiencing three or more of the following problems:

(1) Twenty percent or more of the population with incomes below the poverty level as reported in the latest decennial census.

(2) Fifteen percent or more of the labor force is unemployed as reported in the census of 1980 or as reported in a survey done by the municipality.

(3) Five percent or more loss of population between 1970 and 1980 as reported by the Bureau of the Census of the United States Department of Commerce.

(4) Significant business vacancy rate within the area, either in gross footage or acreage or in the number of business or industrial buildings.

(5) Significant reduction in employment since 1977.

Section 7. Special provisions.

(a) Limit on grants and loans to particular municipalities.—No more than 10% of funds appropriated pursuant to this act shall be loaned or granted to local sponsors in a particular municipality.

(b) Limit on grants for infrastructure on publicly owned property.—In no case shall more than 10% of the funds appropriated in any State fiscal year pursuant to this act be utilized as specified in section 6, nor shall any municipality receive more than one grant in any single fiscal year.

(c) Minimum allocation to small communities.—A minimum of 25% of the grants and loans issued pursuant to this act shall be allocated to small communities.

(d) Evidence of eligibility.—No loan or grant shall be made without substantiation of the provisions of section 4.

(e) Liens.—Funds loaned will be secured by lien positions on collateral at the highest level of priority the department determines feasible to accommodate the project, consistent with section 4(a)(4).

(f) Penalty.—Private companies which fail to create the number of jobs specified in an approved application shall be liable for a penalty equal to an increase in the interest charged 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

private company. The penalty shall be payable in installments which the secretary deems appropriate. Immediate notice of penalties and waivers of penalties, including the penalties in section 4(a)(4), with the reasons thereof, shall be submitted by the secretary to the Chief Clerk of the House of Representatives and to the Secretary of the Senate, along with the secretary's decision on the imposition of penalties and the reasons for this decision.

(g) **Withholding of liquid fuel tax allocation.**—Municipalities receiving interest free loans which fail to meet their repayment obligations shall have all or part of their liquid fuel tax allocation withheld or other penalties, as the department may prescribe. The secretary shall immediately give the name of the municipality and the reasons for, and amount of, the penalty to both the Chief Clerk of the House of Representatives and the Secretary of the Senate.

(h) **Relocation; job increase.**—This act is expressly not intended to encourage the relocation of a company from one jurisdiction within the Commonwealth to another. Any request by a local sponsor for assistance to be provided a firm which currently operates a similar business in the Commonwealth must be accompanied by a demonstration that the total net increase in full-time equivalent jobs, using the current number of jobs in all similar businesses operated by the private company in the Commonwealth as a base, shall be at least 10%. This requirement shall not apply to private companies relocating from small business incubators.

Section 8. Additional powers and duties of the department.

(a) **Rules and forms.**—The department may prescribe such application forms and promulgate such guidelines, rules and regulations as may be necessary to carry out the provisions of this act with respect to loan and grant conditions and criteria for evaluation of the economic benefit of proposed loans and grants and for determining and evaluating compliance with all the criteria established in this act. Guidelines and changes to guidelines shall be provided to the Chief Clerk of the House of Representatives and the Secretary of the Senate when they become effective.

(b) **Reporting.**—On or before the March 1 following the adoption of this act and in each succeeding year in which loans are outstanding, the department shall provide a report to the Chief Clerk of the House of Representatives and the Secretary of the Senate for the preceding calendar year. The report shall contain, at a minimum, the following information:

(1) A list of the approved projects including local sponsor, name of private company, cost of project, amount of private investment, projected number of new jobs, location of project, date of submission of the application by the local sponsor, type of project and estimated completion date of project.

(2) A list of applications not approved.

(3) A list of pending applications.

(4) A list of projects where job projections are not being met or the project is not being completed and the penalty being applied or the reason a penalty is not being applied.

(5) Estimates of State and local tax revenue increases caused directly by project.

(6) A list of projects approved or completed in years prior to the preceding year.

(7) In addition to the data reporting required above, the department shall accumulate from the sponsors of approved projects the following data on an annual and cumulative basis:

(i) The number of jobs actually created by these projects.

(ii) Estimated increased tax revenue caused by the projects.

(8) Guidelines issued for this program.

(9) An overall statement of the progress of the program during the preceding year, along with recommendations for improvements.

Section 9. Guidelines and regulations.

(a) 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 (c), shall be effective for a period not to exceed one year from the effective date of this act.

(b) Expiration of exemption.—Except as provided in subsection (c), 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.

(c) Exception.—The General Assembly may provide for an extension of the guidelines adopted pursuant to subsection (a), 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 (a).

Section 10. Nondiscrimination.

No grant, loan or loan guarantee shall be made to a recipient under this act unless the recipient 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.

Section 11. Appropriation.

The sum of \$16,000,000, or as much thereof as may be necessary, is hereby appropriated from the Pennsylvania Economic Revitalization Fund to the department for the fiscal year July 1, 1984 to June 30, 1985, for grants and loans as specified in this act.

Section 12. Termination.

No assistance shall be approved pursuant to this act after June 30, 1987.

Section 13. Effective date.

This act shall take effect immediately.

APPROVED—The 2nd day of July, A. D. 1984.

DICK THORNBURGH