

No. 1984-109

AN ACT

SB 1439

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.

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 Capital Loan Fund 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:

“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.

“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.

“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 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, 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 3. Capital Loan Fund.

(a) Creation.—There is hereby created a special account in the Treasury Department, to be known as the Capital Loan Fund, to which shall be credited all program appropriations made by the General Assembly, Federal funds made available under the Appalachian Regional Development Act of 1965, the Public Works and Economic Development Act of 1965, or any other statute, regulation or program, the designated proceeds from the bond issue authorized by the act of July 2, 1984 (P.L. 512, No. 104), known as the Pennsylvania Economic Revitalization Act, 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 enumerated herein.

(b) Requisitions.—The department shall requisition from the fund such amounts as may be necessary to provide adequate funds for payments under this act. No more than 2% of the funds appropriated to the fund in any fiscal year from the Economic Revitalization Fund shall be used by area loan organizations for administrative costs necessary for carrying out the provisions of this act. Area loan organizations may establish and charge reasonable fees for processing loans or loan guarantees under this act, with the approval of the secretary. 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 fund, it being the intent of this act that the fund shall operate as a revolving fund whereby all appropriations, deposits, contributions and payments and interest made thereto may be applied and reapplied to the purposes of this act, including the costs to the area loan organization as specified in this subsection.

(c) 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 act.

(d) Proceeds from repayments of loans.—Any other provisions of this act notwithstanding, proceeds from repayments of loans made with funds

provided pursuant to the bond issue authorized by the act of July 2, 1984 (P.L.512, No.104), known as the Pennsylvania Economic Revitalization Act, shall be deposited into such accounts and disposed of as provided therein.

Section 4. Eligibility for loans; terms and conditions.

(a) Class I loans.—Eligibility requirements for Class I loans shall be established by the secretary and shall conform in all respects to those requirements imposed by the Appalachian Regional Commission for use of Federal funds under the Appalachian Regional Development Act.

(b) Class II loans.—Eligibility requirements for Class II loans shall be established by the secretary and shall conform in all respects to those requirements imposed by the Economic Development Administration for use of Federal funds under the Public Works and Economic Development Act of 1965.

(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% of the total project cost, or \$50,000, 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.

Section 5. Application and administration.

(a) Class I loans.—Application and administration procedures for Class I loans shall be established by the secretary and shall conform in all respects to those procedures required or established by the Appalachian Regional Commission for use of Federal funds under the Appalachian Regional Development Act of 1965.

(b) Class II loans.—Application and administration procedures for Class II loans shall be established by the secretary 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.

(c) Class III loans.—

(1) The secretary may designate an area loan organization to receive loan applications from small business enterprises and administer loan portfolios in each area of the Commonwealth. Applications shall be made to the area loan organization in the form and manner as the secretary and the 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 organization. The decision action of the organization 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 applicant as determined from outside credit reporting services and other sources.

(iv) Number of net new employment opportunities created by the proposed project.

(v) Eligibility of applicant as a small business enterprise.

(vi) Capital needs of the small business enterprise.

(vii) Whether the small business enterprise will enhance this Commonwealth's national and international market shares.

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

(3) Upon approval of the loan application by the area loan organization, the organization shall forward the application and all supporting documentation which the secretary shall require, including a copy of the proper resolution of the governing body, 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 business enterprise and the project for which loan proceeds will be used.

(ii) Creation of a satisfactory number of new net employment opportunities within the Commonwealth.

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

(iv) Proper procedural action by the area loan organization.

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

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

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.

(4) The secretary shall, to the extent practicable, notify the area loan organization and the applicant business enterprise of his or her 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 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 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 organization and the secretary shall require and conform in all respects to the loan package as approved by the organization and the secretary.

(5) All 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 as the secretary shall require, but in no case less than twice a year. Said 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 its requisite number of new long-term employment opportunities.
- (ix) Such other information and documentation as the secretary shall require.

(6) In the event that a small business enterprise shall fail to comply with and create the number of new 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 of the control of the small business enterprise. 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 Chief Clerk of the House of Representatives and the Secretary of the Senate.

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 in connection with those capital development projects which conform in all respects to the provisions of section 4(c). 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 in the Commonwealth consistent with the purposes of this act.

Section 7. Powers of the secretary; rules and regulations.

The secretary shall have and may exercise all powers and authority necessary to the proper administration and implementation of this act and shall have authority to adopt policies, procedures and guidelines and promulgate rules and regulations necessary to effectuate the provisions of this act.

Section 8. Reporting and inspection.

(a) **Inspection.**—Each small business enterprise 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.

(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 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 unless the small business enterprise 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 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 10. Conflict of interest.

No employee of the department and no officer or employee of any area loan organization shall, either directly or indirectly, be a party to or have any financial interest in any contract or agreement arising pursuant to this act.

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.

(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 Commit-

tee 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 12. Reports to General Assembly.

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

- (1) Types of businesses receiving aid and the amounts and terms of the aid.
- (2) Loans or other aid repaid.
- (3) Loans or other aid outstanding and balances due, including delinquent payments.
- (4) Jobs created by businesses receiving aid in all previous years.
- (5) Increases in retail sales of the businesses receiving aid.
- (6) Estimated tax revenue increase due to aid from the fund.

(b) Copies of policies, guidelines and rules.—The secretary shall provide copies of all official policies, guidelines or rules regarding the program to the Chief Clerk of the House of Representatives and to the Secretary of the Senate. Reports received by the department under section 5(c)(5) shall be made available upon request to members of the General Assembly.

Section 13. Appropriations.

The sum of \$5,000,000 is hereby appropriated to the Capital Loan Fund from the Economic Revitalization Fund, pursuant to the restrictions established by section 3(d).

Section 14. Effective date.

This act shall take effect immediately.

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

DICK THORNBURGH