

No. 1984-111

## AN ACT

HB 2292

Creating a small business incubator program; providing for loans and loan guarantees to small business incubators; specifying the conditions of and requirements for grants and loans; providing for seed grants; 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 Small Business Incubators 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:

“Board.” The Board of the Ben Franklin Partnership Fund as established by the act of December 6, 1982 (P.L.774, No.223), entitled “An act amending the act of April 9, 1929 (P.L.177, No.175), entitled ‘An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined,’ changing the name of the Pennsylvania Science and Engineering Foundation and further providing for membership on and duties of the board.”

“Incubator.” A facility in which small units of space may be leased by a tenant and in which management maintains or provides access to business development services for use by tenants.

“Local sponsor” or “sponsor.” An organization which enters into a written agreement with the board to establish, operate and administer a small business incubator facility or to provide funding to an organization which operates such a facility, including municipalities, local development districts

of the Appalachian Regional Commission, industrial and commercial development authorities established pursuant to the act of August 23, 1967 (P.L.251, No.102), known as the Industrial and Commercial Development Authority Law, redevelopment authorities established pursuant to the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law, municipal authorities organized pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, or any private nonprofit or for-profit organization approved by the board.

“Seed capital fund.” A special investment vehicle which provides equity and other capital to small businesses during the earliest stages of business growth, including businesses in incubators.

“Tenant.” A sole proprietorship, business partnership or corporation operating a business for profit and leasing or otherwise occupying space in an incubator.

### Section 3. Creation of program.

There is hereby established under the direction of the board a Statewide loan and loan guarantee program for the establishment, operation and administration of small business incubators, to be known as the Small Business Incubator Program.

### Section 4. Incubator loans and loan guarantees.

(a) Application.—A local sponsor may submit an application to the board to obtain a loan or loan guarantee to establish an incubator. Each application shall:

(1) Demonstrate that a facility exists that can be transformed into an incubator at a specified cost.

(2) Demonstrate the ability to directly provide or arrange for the provision of business development services for tenants of the incubator. These services shall include, but not be limited to, financial consulting assistance, management and marketing assistance and physical services.

(3) Demonstrate a potential for sustained use of the incubator facility by eligible tenants, through a market study or other means.

(4) Demonstrate the ability to manage and operate the incubator facility in accordance with section 5.

(5) Include other information as the board may require through guidelines.

(b) Review of application.—The board shall review and accept applications based on the following criteria:

(1) Ability of the local sponsor to carry out the provisions of section 5.

(2) Economic impact of the incubator on the community.

(3) Conformance with areawide and local economic development plans if such exist.

(4) Location of the incubator, in order to encourage geographic distribution of incubators across the State.

(5) Such other criteria as may be established by the board through guidelines.

(c) Loan conditions.—

(1) Loans awarded or guaranteed shall be used only for the acquisition and leasing of land and existing buildings, the rehabilitation of buildings or other facilities and the purchase of equipment and furnishings, which are necessary for the creation and operation of the incubator.

(2) Loans and loan guarantees may not exceed 50% of total eligible project costs, or \$650,000, whichever is less.

(3) Funds loaned 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. When the obligation of a local sponsor is guaranteed, the financial institution holding the obligation shall be required to adequately secure the obligation.

(4) Loans and loan guarantees for an incubator in which the facility is currently leased shall only be made if the applicant intends to buy the facility. These loans shall be secured by a leasehold mortgage.

(5) Payment of interest and principal on loans may be deferred at the discretion of the board.

(6) Interest on all loans shall be no less than the interest paid on the bonds issued pursuant to the act of July 2, 1984 (P.L.512, No.104), known as the Pennsylvania Economic Revitalization Act.

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

#### Section 5. Responsibilities of local sponsors.

A local sponsor, or the organization receiving assistance through the local sponsor, shall have the following responsibilities and duties in establishing and operating an incubator with assistance from this program:

(1) Secure title on the facility or a lease with the intent to secure title to the facility.

(2) Manage the physical development of the incubator facility, including the provision of common conference or meeting space.

(3) Furnish and equip the facility to provide business services to the tenants.

(4) Market the facility and secure eligible tenants.

(5) Provide financial consulting, marketing and management assistance services or arrange for the provision of these services for tenants of the incubator, including assistance in accessing private financial markets.

(6) Set rental and service fees.

(7) Encourage the sharing of ideas between tenants and otherwise aid the tenants in an innovative manner while they are within the incubator.

(8) Establish policies and criteria for the acceptance of tenants into the incubator and for the termination of occupancy of tenants so as to maximize the opportunity to succeed for the greatest number of tenants, consistent with the other criteria specified in this act. Retail enterprises, not-for-profit enterprises, wholesale enterprises and personal service enterprises are not permitted as tenants in incubators funded through this act.

(9) Establish a local advisory committee to assist in the performance of these functions.

Section 6. Challenge grants for seed capital funds.

(a) Purpose.—The board is authorized to award challenge grants for the purposes of establishing seed capital funds to assist young small businesses, including businesses in incubators, to create new jobs in this Commonwealth.

(b) Application.—Advanced technology centers or other organizations approved by the board may submit applications to receive challenge grants to assist in establishing seed capital funds. Each application shall:

(1) Describe the purposes of the proposed seed capital fund, including the types of businesses to receive investments and the types of investments to be made, consistent with subsection (c).

(2) Explain the need for the challenge grant in attracting private investment to the proposed seed capital fund.

(3) Present a plan for establishing the proposed seed capital fund, including the amount of private investment sought, the strategy for obtaining such investments and the persons or organizations who may manage the fund.

(4) List private investment commitments obtained to date.

(c) Use of funds.—The board may award challenge grants to eligible applicants following receipt of an application consistent with the criteria specified in this act. Recipients of grants shall not expend any of the funds awarded unless and until the board has assured itself that the following conditions hold:

(1) Either:

(i) at least \$3 of private investment has been committed to the proposed seed capital fund for every \$1 of the challenge grant awarded and at least \$3,000,000 of total investment, including the challenge grant, has been committed to the proposed fund; or

(ii) at least \$1 of private investment has been committed to the proposed seed capital fund for every \$1 of the challenge grant awarded; at least \$1.5 million of total investment, including the challenge grant, has been committed to the seed capital fund; and no investment is to be made from the fund in a small business project without an equal or greater investment from private sources other than the fund in the same small business project, such that, in total, at least \$3 of private investment has been committed to an individual small business project for every \$1 of challenge grant funds invested.

(2) Investments from the seed capital fund will be made exclusively in small businesses located in this Commonwealth, including, but not limited to, tenants of incubators. For the purposes of this section, small businesses shall not include businesses of a mercantile or services related nature, but shall include international export related services, international export related mercantile ventures and advanced technology or computer related ventures which will increase the Commonwealth's share of domestic or international markets.

(3) Total investments in a small business using seed capital funds should ordinarily be less than \$250,000 during any round of financing for a small business.

(4) The grant recipient shall serve as a limited partner or coinvestor with limited liability in the proposed fund and returns on investment of challenge grant funds shall be reinvested in the seed capital fund.

In the event that recipients of funds cannot demonstrate these conditions by June 30, 1986, the grants, or the portions thereof for which the conditions are not satisfied, shall be rescinded by the board and shall be available to the board to use for loans and loan guarantees to incubators consistent with section 4.

#### Section 7. General powers and duties of the board.

The board shall:

(1) Adopt such rules, statements of policy, procedures, forms and guidelines as may be necessary for the implementation of this act.

(2) Make loans and loan guarantees to local sponsors for incubators and award seed capital challenge grants.

(3) Ensure that local sponsors receiving loans or loan guarantees and recipients of challenge grants meet the conditions of this act.

(4) Receive and evaluate annual reports from local sponsors. The annual reports shall include, but not be limited to, a financial statement for the incubator, evidence that all tenants in the facility are eligible under the terms of the legislation and a list of companies in the incubator.

(5) Receive and evaluate annual reports from recipients of seed capital challenge grants. The reports shall include, but not be limited to, the policies and procedures of the seed capital fund, the amount of private investment in the fund and the number, types and amounts of investment in small firms by the fund.

#### Section 8. Indicators of program impact.

On or before March 1 of each year, the board shall provide a report to both the Chief Clerk of the House of Representatives and the Secretary of the Senate which shall include, but not be limited to:

(1) The number of applications for incubators submitted to the board.

(2) The number of applications for incubators approved by the board.

(3) The number of incubators created through this program.

(4) The number of tenants occupying each incubator.

(5) The number of jobs provided by each incubator and tenants of each incubator.

(6) The occupancy rate of each incubator.

(7) The number of firms still operating in the Commonwealth after leaving incubators and the number of jobs they have provided. The board shall attempt to identify the reasons why any companies have left the Commonwealth after starting in an incubator.

(8) The number of seed capital funds established with challenge grants, the amount of private investment in the funds and the number, types and amounts of investments in small firms by the funds.

#### Section 9. Nondiscrimination.

No loan or loan guarantee shall be made to a small business or local sponsor unless it certifies to the board, in a form satisfactory to the board, 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 10. Guidelines and regulations.

(a) One-year exemption from review.—In order to facilitate the speedy implementation of this program, the board 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 established 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 11. Appropriations.

(1) The sum of \$5,000,000, or as much thereof as may be necessary, is hereby appropriated from the *Pennsylvania Economic Revitalization Fund* for the fiscal year July 1, 1984 to June 30, 1985, for loans and guarantees to local sponsors pursuant to section 4.

(2) The sum of \$3,000,000 is appropriated from the *Pennsylvania Economic Revitalization Fund* for the fiscal year beginning July 1, 1984, for the Seed Capital Challenge Grant Program. These funds shall not lapse until June 30, 1987.

Section 12. Time limit on approvals.

No assistance under section 4 shall be approved by the board 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