

## No. 1986-101

## AN ACT

## HB 792

Amending the act of July 2, 1984 (P.L.555, No.111), entitled "An act 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," further providing for grants and loan guarantees; and removing provisions relating to guidelines and regulations.

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

Section 1. The title, the definition of "tenant" in section 2 and sections 4, 5 and 7(1) of the act of July 2, 1984 (P.L.555, No.111), known as the Small Business Incubators Act, are amended and section 2 is amended by adding a definition to read:

## AN ACT

Creating a small business incubator program; providing for *grants*, 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.

## 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:

***"Anchor tenant."*** *A tenant other than a retailer, provided that the tenant has an incubator lease of more than two years.*

\* \* \*

**"Tenant."** A sole proprietorship, business partnership or corporation operating a business for profit *or, if permitted by this act, not for profit*, and leasing or otherwise occupying space in an incubator.

Section 4. Incubator *grants*, loans and loan guarantees.

(a) Application.—A local sponsor may submit an application to the board to obtain a *grant*, 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] Grant and loan conditions.—**
- (1) **[Loans] Grants and 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] Grants, loans** and loan guarantees may not exceed 50% of total eligible project costs, or \$650,000, whichever is less. *The maximum grant amount awarded in any project may not exceed \$240,000. Grants shall be provided only to projects located in municipalities designated as distressed under the act of July 2, 1984 (P.L.520, No.105), known as the Business Infrastructure Development Act.*
  - (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] Grants, 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] determined by the secretary and published as a notice in the Pennsylvania Bulletin and shall not be required to be equal throughout this Commonwealth.**
  - (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 (*except not-for-profit enterprises engaged in research and development*), wholesale enterprises and personal service enterprises are not permitted as tenants in incubators funded through this act. *Up to 20% of the useful square footage of such a facility shall be occupied by an anchor tenant who does not meet these eligibility requirements.*
- (9) Establish a local advisory committee to assist in the performance of these functions.

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, *including the encouragement of incubators in economically distressed areas such as State or federally designated enterprise zones, municipalities which meet criteria for distress as identified in section 6 of the act of July 2, 1984 (P.L.520, No.105), known as the Business Infrastructure Development Act, and urban renewal areas designated in conformity with the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law: Provided, That it is not the intent of this act to limit the establishment of incubators to such economically distressed areas.*

\* \* \*

Section 2. Section 10 of the act is repealed.

Section 3. The provisions of this amendatory act shall be retroactive to April 1, 1986, and shall apply to all applications approved on or after April 1, 1986.

Section 4. This act shall take effect immediately.

APPROVED—The 9th day of July, A. D. 1986.

DICK THORNBURGH