

No. 1989-46

AN ACT

HB 110

Amending the act of July 2, 1984 (P.L.545, No.109), entitled "An act 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," further providing for loans to agricultural processors.

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

Section 1. The definition of "Class III loans" in section 2 of the act of July 2, 1984 (P.L.545, No.109), known as the Capital Loan Fund Act, amended July 9, 1986 (P.L.1226, No.111), is amended and the section is amended by adding definitions to read:

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:

"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.*

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"Class III loans." All loans made under the provisions of this act other than Class I, Class II, *Class IV*, apparel industry loans or export assistance loans.

"Class IV loans." *Loans made to agricultural processors from the Capital Loan Fund under the provisions of this act.*

* * *

"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.*

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Section 2. Sections 4 and 5 of the act are amended by adding subsections to read:

Section 4. Eligibility for loans; terms and conditions.

* * *

(f) Class IV loans.—

(1) The secretary shall make advances from the Capital Loan Fund subject to the terms, conditions and restrictions provided under this act to area loan organizations for the purpose of making loans to agricultural processors for capital development projects which demonstrate a need to either maintain or increase market position and produce new employment opportunities. Class IV loans will:

(i) Have a maximum loan ceiling of \$100,000 or 50% of the cost of the project, whichever is less. The department may blend loan funds from other Capital Loan Fund classes in amounts not to exceed \$200,000 if the applicant can meet the required eligibility criteria for those classes.

(ii) Be limited to physical plant equipment, machinery, buildings and associated lands.

(iii) Require a private source of matching funds.

(2) No loans shall be made which 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 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 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.

(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 interest rate shall be established by the secretary.

(ii) The term of any loan shall not exceed five years for machinery and equipment or ten years for building loans.

Section 5. Application and administration.

* * *

(e) Class IV loans.—

(1) The secretary shall designate an area loan organization to receive loan applications from agricultural processors. Applications shall be made

to the area loan organization in the form and manner as the secretary and 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 the 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) Eligibility of the applicant as an agricultural processor.

(iv) Capital need of the applicant.

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

(vi) Such information and documentation as the secretary shall require.

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

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

(3) Area loan organizations may establish and charge reasonable fees for processing loans or guarantees under this act with the approval of the secretary. Area loan organizations may not receive administrative expenses from funds provided for Class IV loans.

(4) Upon approval of the loan application, the area loan organization shall forward the application and all supporting documentation to the Secretary of Agriculture and the Secretary of Commerce for review. Each application and supporting documentation shall be reviewed to ensure the following:

(i) Loans will assist small agricultural processing firms to increase their market share and enhance their competitive advantage.

(ii) Loans will enable the Commonwealth to meet changing agricultural market demands and increased productivity requirements in the future.

(iii) Eligibility of the agricultural processor and the project for which proceeds will be used.

(iv) Creation or preservation of a satisfactory number of net employment opportunities within this Commonwealth.

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

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

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

(5) *The secretary shall, to the extent practicable, notify the area loan organization and the applicant agricultural processor 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 agricultural processor in the form of a loan transaction, which loan shall be evidenced by a note executed by the agricultural processor, 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.*

(6) *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 of Agriculture and the Department of Commerce as the secretary shall require, but in no case less than twice a year. 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 agricultural processor in creating its requisite number of new long-term employment opportunities.*

(ix) *Such other information and documentation as the secretary shall require.*

(f) *Finality of decision.—All decisions of the Secretary of Commerce regarding the approval or disapproval of loans under this act, including eligibility of agricultural processors and loan projects, shall be final.*

Section 3. This act shall take effect in 60 days.

APPROVED—The 10th day of July, A. D. 1989.

ROBERT P. CASEY