

No. 1996-116

AN ACT

HB 2666

Providing for an infrastructure development program, for grants and loans for infrastructure improvements in relation to private developer investment, for duties of the Department of Community and Economic Development and for eligibility requirements and application procedures; and making repeals.

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 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:

“Agricultural processing.” Processes involving either of the following:

(1) The manufacture, development or preparation for sale of one or more farm commodities which adds value to those commodities.

(2) The conversion of 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.

“Applicant.” The term includes the following:

(1) A municipality.

(2) A municipal authority organized under the act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945.

(3) A redevelopment authority organized under the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law.

(4) An industrial development agency as defined under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

(5) An industrial and commercial development authority as defined under the act of August 23, 1967 (P.L.251, No.102), known as the Economic Development Financing Law.

(6) A local development district as defined under the act of December 7, 1994 (P.L.845, No.120), known as the Local Development District Act.

“Department.” The Department of Community and Economic Development of the Commonwealth.

“Export service enterprise.” A person, partnership, corporation or other for-profit business entity engaged in activities which increase the

Commonwealth's share of domestic and international commerce. An export service enterprise shall be found to increase the Commonwealth's share of domestic and international commerce if more than half of its sales or services are rendered to customers outside of this Commonwealth.

"Facility." The land, buildings or depreciable assets into which a private company or private developer makes a new private investment and which is complemented by infrastructure improvements funded under this act.

"Former industrial site." A manufacturing or industrial facility which is not in operation or production and which has been dormant for at least six months prior to the date of application.

"Green fields." Land which has never been developed for uses other than agriculture, forestry or recreation.

"Industrial operation." The term includes industrial processing and warehouse and terminal operations.

"Infrastructure improvements." The term includes the following:

- (1) The construction or rehabilitation of the following:
 - (i) Drainage systems.
 - (ii) Energy facilities which generate and distribute power.
 - (iii) Sewer systems, including, but not limited to, the construction or repair of sewage collection lines and sewage treatment facilities.
 - (iv) Transportation facilities directly affecting the site of the proposed private investment, including:
 - (A) Roads providing access to the site.
 - (B) Parking facilities.
 - (C) Sidewalks.
 - (D) Bridges.
 - (E) Rails, including, but not limited to, the construction or rehabilitation of rail switches and signals, rail crossings and intermodal facilities.
 - (F) Ports, including, but not limited to, docking facilities, bulkheads and intermodal facilities, but not warehouses.
 - (G) Waterways, including, but not limited to, channel realignment, dredging and the construction or rehabilitation of locks.
 - (H) Airports, including, but not limited to, the construction or rehabilitation of runways, but not airport buildings.
 - (I) Pipelines transporting natural gas, but not vehicles associated with the operation of the pipelines.
 - (J) Facilities for the transmission of information, including, but not limited to, fiber-optic telecommunication lines.
 - (v) Water supply facilities, including, but not limited to, water lines and water storage, treatment and distribution facilities.
- (2) The acquisition of land, rights-of-way and easements necessary to construct eligible infrastructure improvements.
- (3) At former industrial sites:
 - (i) The acquisition of land and buildings by private developers.

(ii) The construction of new multitenant industrial or manufacturing buildings by developers.

(iii) The conversion of existing industrial or manufacturing buildings into multitenant buildings by private developers.

(4) The demolition of buildings.

(5) The clearing and preparation of land.

(6) The cleanup of hazardous waste materials.

(7) The engineering, design and inspection costs associated with other eligible infrastructure improvements.

“Manufacturing operation.” The giving of new shapes, new qualities or new combinations to matter by the application of skill and labor.

“Private company.” A for-profit enterprise engaged in manufacturing, industrial, research and development or agricultural processing; or is an export service enterprise.

“Private developer.” Any person, partnership, corporation or other for-profit business entity, or any nonprofit corporation whose purpose is the promotion or construction of industrial development projects, that is engaged in the development of real estate for use by more than one private company and that is determined by the department to be financially responsible to assume all obligations proposed to be undertaken, including, but not limited to, acquisition, development, construction, leasing, sale, operation and financing.

“Private match.” An investment, other than with funds made available under this act, by the private company or private developer in a facility or in infrastructure improvements at the site or serving the site of the facility.

“Publicly owned infrastructure improvements.” Infrastructure improvements which are owned by the applicant or by an entity eligible to be an applicant at the time the grant is made or which will be owned by the applicant or by an entity eligible to be an applicant upon the completion of the infrastructure improvements funded under this act. The term shall not include infrastructure improvements which are accessible only to one user.

“Research and development enterprise.” A person, partnership, corporation or other for-profit business entity engaged in the discovery of new and the refinement of known substances, processes, products, theories and ideas.

“Secretary.” The Secretary of Community and Economic Development of the Commonwealth.

“Targeted community.” A geographical area designated by the Department of Community and Economic Development as deserving of special consideration because of one or more adverse economic factors. This term shall include enterprise zones established under the act of July 9, 1986 (P.L.1216, No.108), known as the Enterprise Zone Municipal Tax Exemption Reimbursement Act, distressed communities as defined under the act of July 10, 1987 (P.L.246, No.47), known as the Municipalities Financial Recovery Act, and an area designated by the Federal Government as an empowerment zone or enterprise community.

Section 3. Infrastructure Development Program.

There is hereby established within the Department of Community and Economic Development a program, to be known as the Infrastructure Development Program, for the purpose of making grants, grant-to-loans and loans for specific infrastructure improvements necessary to complement investment in a facility by a private company or private developer.

Section 4. Eligibility requirements.

(a) General rule.—To be eligible for assistance under this act, a private company or private developer must meet the conditions set forth in this section to the satisfaction of the department.

(b) Job creation.—The private company must create or the private developer must cause to be created within five years from the date of the completion of the project:

(1) A minimum of ten full-time equivalent jobs.

(2) At least one full-time equivalent job for every \$25,000 either loaned or granted for the infrastructure improvements.

(c) Private investment.—The private company or private developer must contribute to the project \$2 of private match for every \$1 of assistance provided under this act.

(d) Project need.—The private company or private developer must demonstrate that the infrastructure improvements are necessary for the efficient and cost-effective operation of the private company or the successful marketing of the facility by a private developer and that the project would not be possible without the injection of funds provided under this act for infrastructure improvements.

(e) Adequate security.—The applicant, private company or private developer must provide adequate security to cover the cost of the grant-to-loan or loan, as determined by the department.

(f) Financial soundness.—The private company or private developer must be financially sound and able to fulfill the commitments made in its letter of intent.

(g) Time frame.—The private company or private developer must demonstrate that the project will be completed within the time frame established by program guidelines.

(h) Consistency with ordinances.—The private company or private developer must demonstrate that the project is consistent with local zoning and subdivision ordinances and regional economic development plans where such ordinances and plans exist.

(i) Other requirements.—Such other eligibility requirements as may be determined by the department.

Section 5. Application procedure.

(a) Letter of intent.—An application for a grant, grant-to-loan or loan shall be initiated by a private company or private developer through a letter of intent to locate, expand, build or renovate a facility. The letter of intent

shall be submitted to an applicant whose service area includes, at least in part, the site of the facility.

(b) Application.—Upon receipt of the letter of intent, an applicant may submit the letter of intent along with a request for an application to the department. Upon receipt of this information and a preliminary indication of project eligibility, the department shall provide an applicant with the application materials.

(c) Evaluation.—Upon receipt of a complete application, the department shall review the application based on the following criteria:

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

(2) In the case of a grant-to-loan or loan, the ability of the applicant, private company or private developer to repay the interest and principal.

(3) The increase in the Commonwealth's share of domestic and international commerce.

(4) For former industrial sites, the creation of opportunities to develop new facilities or expand existing facilities for private companies by eliminating, reducing or otherwise alleviating blight at the site.

Section 6. Types of assistance.

(a) Grants.—The department may award grants to an applicant only for publicly owned infrastructure improvements.

(b) Grant-to-loans.—The department may award grants to an applicant, which the applicant in turn shall loan to a private company or private developer, upon terms and conditions approved by the department, for infrastructure improvements on privately owned property located in targeted communities. Loan and interest repayments may be retained by applicants who service targeted communities and who demonstrate to the satisfaction of the department their capability to successfully administer a revolving loan fund. Such applicants, upon the written approval of the department, may use the funds received to make loans for new or different projects eligible under any department business or infrastructure financing program within the applicant's jurisdiction. This subsection shall not take effect until the criteria for targeted communities has been included in the annual financing strategy submitted to the General Assembly.

(c) Loans.—The department may approve loans for an applicant, private company or private developer for privately owned infrastructure improvements on property not located in targeted communities. Interest rates for loans will be determined by the Commonwealth. A lower interest rate for loans shall be given to businesses which locate or expand in counties in which the lowest interest rate under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act, is applicable to investments qualifying for loans under the Pennsylvania Industrial Development Authority Act.

Section 7. Limitations.

No grant, grant-to-loan or loan shall be made which would 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% net increase in employment.

Section 8. Penalties.

(a) General rule.—Private companies or private developers who fail to create the number of jobs specified in a funded application or who fail to inject the required amount of private investment into the projects shall be liable for a penalty of up to the full amount of the grant, grant-to-loan or loan awarded by the department unless the penalty is waived by the secretary because the failure is due to circumstances outside the control of the private company or private developer. The penalty shall be payable in one lump sum or in installments, with or without interest, as the secretary deems appropriate.

(b) Repayment.—The secretary may, in the case of grant-to-loans or loans, elect:

(1) to demand repayment of the entire outstanding principal balance of the grant-to-loan or loan;

(2) to permit repayment of the loan in accelerated installments with an interest rate accruing on the unpaid balance of those installments at a rate not to exceed the prime interest rate plus 2% per annum; or

(3) not to accelerate any repayment of principal, but increase the interest rate charged on the outstanding principal of the grant-to-loan or loan at a rate not to exceed the prime interest rate plus 2% per annum.

Section 9. Collection of information.

The department shall collect from an applicant and an applicant, private company or private developer shall provide such information as is necessary to ensure that the department is able to fulfill its obligations under this act. This information shall include such things as the number of jobs created and the amount of private investment made at the project site.

Section 10. Powers of secretary and rules and regulations.

The department shall set forth in the annual financing strategy submitted to the General Assembly those policies, procedures and guidelines necessary to carry out this act.

Section 11. Restrictions on funding.

(a) Counties.—No more than 20% of funds available under the Infrastructure Development Program in any fiscal year shall be loaned or granted for projects in any county.

(b) Certain green field projects.—No more than 10% of the funds available under the Infrastructure Development Program in any fiscal year shall be loaned or granted to applicants for green field projects not involving private companies.

(c) Dollar amount.—No individual grant, grant-to-loan or loan shall exceed \$1,250,000.

(d) Former industrial sites.—A minimum of 20% of the funds available under the Infrastructure Development Program in any fiscal year shall be approved for a grant, grant-to-loan or loan for projects located on a former industrial site.

Section 12. Transition provisions.

(a) Approved applications.—Applications for assistance under the act of May 6, 1968 (P.L.117, No.61), known as the Site Development Act, the act of July 2, 1984 (P.L.520, No.105), known as the Business Infrastructure Development Act, and the act of July 10, 1989 (P.L.313, No.52), known as the Industrial Communities Action Program Act, which have been approved prior to the effective date of this act shall be processed in accordance with the provisions of the Site Development Act, the Business Infrastructure Development Act and the Industrial Communities Action Program Act, respectively, notwithstanding section 13.

(b) Pending applications.—Applications for infrastructure development assistance which have been received by the department but have not been approved prior to the effective date of this act shall be evaluated and processed in accordance with this act.

Section 13. Repeals.

The following acts and parts of acts are repealed:

Act of May 6, 1968 (P.L.117, No.61), known as the Site Development Act.

Act of July 2, 1984 (P.L.520, No.105), known as the Business Infrastructure Development Act.

Act of July 10, 1989 (P.L.313, No.52), known as the Industrial Communities Action Program Act.

Section 14. Effective date.

This act shall take effect July 1, 1996, or immediately, whichever is later.

APPROVED—The 11th day of July, A.D. 1996.

THOMAS J. RIDGE