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THE GENERAL ASSEMBLY OF PENNSYLVANIA

# SENATE BILL

## No. 684 Session of 2011

INTRODUCED BY BREWSTER, BLAKE, FONTANA, SOLOBAY, TARTAGLIONE, COSTA, WAUGH, BOSCOLA, YUDICHAK, STACK, HUGHES, WOZNIAK, WASHINGTON, FARNESE, KASUNIC, KITCHEN, DINNIMAN AND WILLIAMS, MARCH 30, 2011

REFERRED TO COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT, MARCH 30, 2011

AN ACT

Amending Title 12 (Commerce and Trade) of the Pennsylvania Consolidated Statutes, further providing for capital development loans, for loans in distressed communities, for pollution prevention assistance loans and for export financing loans.

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

Section 1. Sections 2306, 2308, 2309 and 2310 of Title 12 of the Pennsylvania Consolidated Statutes are amended to read:

§ 2306. Capital development loans.

(a) Application.--A small business may submit an application and any applicable application fee to its area loan organization requesting a loan for certain costs of a capital development project. The application shall be on the form required by the department and shall include or demonstrate all of the following:

(1) The name and address of the applicant.

(2) A statement of the amount of loan assistance sought.

(3) A statement of the capital development project, including a detailed statement of the cost of the project.

(4) A financial commitment from a responsible source for any cost of the capital development project in excess of the amount requested.

(5) Any other information required by the department.

(b) Area loan organization review.--

(1) Upon receipt of a completed application, an area loan organization shall investigate and determine all of the following:

(i) If the applicant is a small business.

(ii) If the project is a capital development project.

(iii) If, when the applicant is a small business, the capital development project demonstrates a substantial likelihood of creating or preserving employment activities in this Commonwealth or if, when the applicant is an agricultural producer, the project demonstrates a substantial likelihood of enhancing and growing normal agriculture operations.

(iv) The ability of the applicant to meet and satisfy the debt service as it becomes due and payable.

(v) The existence and sufficiency of collateral for the loan.

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

(vii) The number of employment opportunities to be created or preserved by the proposed capital development project.

(viii) If the applicant complied with all other criteria established by the department.

(2) Upon being satisfied that all requirements have been met, the area loan organizations shall recommend the applicant to the department and forward the application with all supporting documentation to the department for its review and approval.

(c) Department review.--

(1) Within 30 days of receiving a recommendation and a completed application, the department shall review the application. If the department is satisfied that all requirements have been met, the department may approve the loan request in accordance with the following:

(i) A loan for land, buildings and machinery and equipment may not exceed [$200,000 or 50%] $250,000 or 75% of the total capital development project costs, whichever is less. For the purposes of this subparagraph, capital development project costs incurred during the [12-month] 18-month period prior to the date of submission of the application to the department shall be considered part of the total capital development project costs.

(ii) A loan for working capital may not exceed [$100,000 or 50%] $150,000 or 75% of the total capital development project costs, whichever is less.

(iii) Except for loans to agricultural producers, a loan must create or preserve one job for every $25,000 loaned.

(2) The department shall notify the area loan organization and applicant of its decision.

(d) Approvals.--For applications which are approved, the department shall draw an advance equal to the principal amount of the loan from the fund. The advance shall be forwarded to the area loan organization and, upon receipt by the area loan organization, shall become an obligation of the area loan organization. Prior to providing loan funds to the applicant, the area loan organization shall require the applicant to execute a note and to enter into a loan agreement. In addition to the requirements of subsection (e), the loan agreement shall include a provision requiring the recipient to use the loan proceeds to pay the costs of the capital development project. The department may require the area loan organization to impose other terms and conditions on the recipient if the department determines that they are in the best interests of this Commonwealth, including a provision requiring collateral for any penalty imposed under subsection (g).

(e) Loan terms.--A loan agreement entered into in accordance with subsection (c) shall do all of the following:

(1) State the collateral securing the loan. All loans shall be secured by lien positions on collateral at the highest level of priority as may be determined by the area loan organization with the approval of the department.

(2) State the repayment period in accordance with the following:

(i) A loan for real property shall have a repayment period of up to [15] 18 years.

(ii) A loan for machinery and equipment shall have a repayment period of up to [ten] 13 years.

(iii) A loan for working capital shall have a repayment period of up to [three] six years.

(iv) If, in a capital development project, there are two or more uses planned, the loan terms may be blended.

(3) State the interest rate in accordance with the following:

(i) Except as provided in subparagraph (ii), loans shall be made at an interest rate not to exceed [5%] 4.5% for the term of the loan.

(ii) A loan to a small business which is an agricultural producer shall be made at an interest rate of not less than [2%] 1.5% for the term of the loan if all of the following apply:

(A) A declaration under 35 Pa.C.S. § 7301(c) (relating to general authority of Governor) is in effect for at least ten days prior to the date of application.

(B) The application is made within nine months of termination of the declaration.

(C) The agricultural producer is in the area which has been declared to be a natural disaster area.

(f) Loan administration.--A loan made under this section shall be administered in accordance with departmental policies and procedures by the area loan organization which made the loan. Each area loan organization shall submit an annual report on the form required by the department and which includes or demonstrates all of the following:

(1) Each outstanding loan.

(2) The date approved.

(3) The original principal amount.

(4) The current principal balance.

(5) The interest rate.

(6) The purpose for which the loan was made.

(7) An enumeration of any problems or issues which have arisen with regard to each loan.

(8) A statement regarding the progress of the small business in creating or preserving its requisite number of employment opportunities.

(9) Any other information or documentation required by the department.

(g) Penalty.--

(1) Except as provided in paragraph (2), the department shall impose a penalty upon a recipient if the recipient fails to create or preserve the number of employment opportunities specified in its approved application.

(2) The department may waive the penalty required by paragraph (1) if the department determines that the failure was due to circumstances outside the control of the recipient.

(3) The amount of the penalty imposed under paragraph (1) shall be equal to an increase in the interest rate to [2%] 2.5% greater than the current prime interest rate for the remainder of the loan.

(h) Defaults.--The department may by foreclosure take title to a capital development project which it financed if acquisition is necessary to protect a loan made under this section. The department shall pay all costs arising out of the foreclosure and acquisition from moneys held in the fund. The department may, in order to minimize financial losses and sustain employment, lease the capital development project. The department may withdraw moneys from the fund to purchase first

mortgages and to make payments on first mortgages on any capital development project which it financed where purchase or payment is necessary to protect a loan made under this section. The department may sell, transfer, convey and assign the first mortgages and shall deposit any moneys derived from the sale of any first mortgages in the fund.

§ 2308. Loans in distressed communities.

(a) Application.--A small business located in a distressed community may submit an application and any applicable application fee to a community development institution requesting a loan for certain costs of a capital development project. The application shall be on the form required by the department and shall include or demonstrate all of the following:

(1) The name and address of the applicant.

(2) A statement that the small business is engaged in business-to-public service or in the mercantile, commercial or point-of-sale retail business sectors.

(3) A statement of the amount of loan assistance sought.

(4) A statement of the capital development project, including a detailed statement of the cost of the project.

(5) A financial commitment from a responsible source for the cost of the capital development project in excess of the amount requested.

(6) Any other information required by the department.

(b) Community development institution review.--

(1) Upon receipt of a completed application, a community development institution shall investigate and determine all of the following:

(i) If the applicant is a small business which is

engaged in business-to-public service or in the mercantile, commercial or point-of-sale retail business sectors in accordance with conditions or criteria established by the department.

(ii) If the project is a capital development project.

(iii) If the applicant has demonstrated a direct impact on the community in which the capital development project is or will be located, on residents of that community or on the local and/or regional economy. The department shall establish criteria that will assist in making this demonstration.

(iv) Number of employment opportunities to be created or preserved by the proposed capital development project.

(v) If the applicant complied with all other criteria established by the department.

(2) Upon being satisfied that all requirements have been met, the community development institution shall recommend the applicant to the department and forward the application with all supporting documentation to the department for its review and approval.

(c) Department review.--

(1) Upon receipt of a recommendation and a completed application, the department shall investigate and determine all of the following:

(i) The ability of the applicant to meet and satisfy the debt service as it becomes due and payable. In reviewing repayment obligations, loans shall not be approved on the basis of direct financial return on

investment and shall not be held to the loan loss standards of private commercial lenders. Loans shall be reviewed for the purpose of establishing a strong economic base and promoting entrepreneurial activity within the distressed community.

(ii) The existence and sufficiency of collateral for the loan.

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

(2) If the department is satisfied that all requirements have been met, the department may approve the loan request in an amount not to exceed [$200,000 or 50%] $250,000 or 75% of the total capital development project costs, whichever is less. For the purpose of this paragraph, capital development project costs, except the costs related to working capital, incurred during the [12-month] 18-month period prior to the date of submission of the application to the department shall be considered part of the total capital development project costs.

(3) The department shall notify the community development institution and applicant of its decision.

(d) Approvals.--For applications which are approved, the department shall draw an advance equal to the principal amount of the loan from the fund and, prior to providing loan funds to the applicant, the department shall require the applicant to execute a note and to enter into a loan agreement. In addition to the requirements of subsection (e), the loan agreement shall include a provision requiring the recipient to use the loan proceeds to pay the costs of the capital development project.

The department may impose other terms and conditions on the recipient if the department determines they are in the best interests of this Commonwealth, including a provision requiring collateral for any penalty imposed under subsection (g).

(e) Loan terms.--A loan agreement entered into in accordance with subsection (d) shall do all of the following:

(1) State any collateral securing the loan. The department may use its best judgment to identify and secure collateral.

(2) State the repayment period which may be flexible.

(3) State the interest rate which may not be less than [2%] 1.5% nor more than [5%] 4.5% for the term of the loan.

(4) State that the recipient agrees to maintain, at a minimum, the number of jobs in existence as of the date of loan application.

(f) Loan administration.--A loan made under this section shall be administered in accordance with departmental policies and procedures.

(g) Penalty.--

(1) Except as provided in paragraph (2), the department shall impose a penalty upon a recipient if the recipient fails to preserve the number of employment opportunities specified in its approved application.

(2) The department may waive the penalty required by paragraph (1) if the department determines that the failure was due to circumstances outside the control of the recipient.

(3) The amount of any penalty imposed under paragraph (1) shall be equal to an increase in the interest rate to [2%] 2.5% greater than the current prime interest rate for

the remainder of the loan.

(h) Defaults.--The department may take title by foreclosure to a capital development project which it financed where acquisition is necessary to protect a loan made under this section. The department shall pay all costs arising out of the foreclosure and acquisition from money held in the fund. The department may, in order to minimize financial losses and sustain employment, lease the capital development project. The department may withdraw money from the fund to purchase first mortgages and to make payments on first mortgages on any capital development project which it financed if purchase or payment is necessary to protect a loan made under this section. The department may sell, transfer, convey and assign the first mortgages and shall deposit in the fund money derived from the sale of any first mortgages.

§ 2309. Pollution prevention assistance loans.

(a) Application.--A small business may submit an application and any application fee to a pollution prevention assistance agency requesting a loan for a pollution prevention infrastructure. The application shall be on the form required by the department and shall include or demonstrate all of the following:

(1) The name and address of the applicant.

(2) A statement of the amount of loan assistance sought.

(3) A statement of the pollution prevention infrastructure, including a detailed statement of the cost of the infrastructure.

(4) A financial commitment from a responsible source for the cost of the pollution prevention infrastructure in excess of the amount requested.

(5) Any other information required by the department.

(b) Pollution prevention assistance agency review.--

(1) Upon receipt of a completed application, a pollution prevention assistance agency shall investigate and determine all of the following:

(i) If the applicant is a small business.

(ii) If the project is for pollution prevention infrastructure.

(iii) If the applicant complied with all other criteria established by the department.

(2) Upon being satisfied that all requirements have been met, the pollution prevention assistance agency shall recommend the applicant to the department and forward the application with all supporting documentation to the department for its review and approval.

(c) Department review.--

(1) Upon receipt of a recommendation and a completed application, the department shall investigate and determine all of the following:

(i) If the pollution prevention infrastructure demonstrates a substantial likelihood of preventing or reducing pollution. The Department of Environmental Protection shall assist the department in reviewing the applications and provide technical assistance.

(ii) The ability of the applicant to meet and satisfy the debt service as it becomes due and payable. In reviewing repayment obligations, loans shall not be approved on the basis of direct financial return on investment and shall not be held to the loan loss standards of private commercial lenders. Loans shall be

reviewed for the purpose of reducing pollution through source reduction technologies or processes.

(iii) The existence and sufficiency of collateral for the loan.

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

(2) If the department is satisfied that all requirements have been met, the department may approve the loan request. A loan approved under this subsection may not exceed the lesser of:

(i) [$100,000] $150,000; or

(ii) [75%] 85% of infrastructure costs.

(3) The department shall notify the pollution prevention assistance agency and applicant of its decision.

(d) Approvals.--For applications which are approved, the department shall draw an advance equal to the principal amount of the loan from the Pollution Prevention Assistance Account. Prior to providing loan funds to the applicant, the department shall require the applicant to execute a note and to enter into a loan agreement. In addition to the requirements of subsection (e), the loan agreement shall include a provision requiring the recipient to use the loan proceeds to pay the costs of the pollution prevention infrastructure. The department may impose other terms and conditions on the recipient if the department determines they are in the best interests of this Commonwealth, including a provision requiring collateral for any penalty imposed under subsection (g).

(e) Loan terms.--A loan agreement entered into in accordance with subsection (d) shall do all of the following:

(1) State the collateral securing the loan. All loans shall be secured by lien positions on collateral at the highest level of priority as may be determined by the department.

(2) State the repayment period which may not exceed [10] 15 years.

(3) State that the interest rate is [2%] 1.5%.

(4) State that any loan fee is not to exceed [5%] 3.5% of the loan amount.

(f) Loan administration.--A loan made under this section shall be administered in accordance with departmental policies and procedures.

(g) Penalty.--

(1) Except as provided in paragraph (2), the department shall impose a penalty upon a recipient if the recipient fails to carry out the pollution prevention infrastructure project as specified in its approved application.

(2) The department may waive the penalty required by paragraph (1) if the department determines that the failure was due to circumstances outside the control of the recipient.

(3) The amount of any penalty imposed under paragraph (1) shall be equal to an increase in the interest rate to [2%] 3% greater than the current prime interest rate for the remainder of the loan.

(h) Defaults.--The department may take title by foreclosure to a pollution prevention infrastructure which it financed if acquisition is necessary to protect a loan made under this section. The department shall pay all costs arising out of the foreclosure and acquisition from money held in the Pollution

Prevention Assistance Account. The department may, in order to minimize financial losses and sustain employment, lease the pollution prevention infrastructure. The department may withdraw money from the Pollution Prevention Assistance Account to purchase first mortgages and to make payments on first mortgages on any pollution prevention infrastructure which it financed if the purchase or payment is necessary to protect a loan made under this section. The department may sell, transfer, convey and assign the first mortgages and shall deposit any money derived from the sale of any first mortgages in the Pollution Prevention Assistance Account.

§ 2310. Export financing loans.

(a) Application.--A person may submit an application and any applicable application fee to the department or its area loan organization requesting a loan for certain costs of a capital development project which will be used in export activities. The application must be on the form required by the department and must include or demonstrate all of the following:

(1) The name and address of the applicant.

(2) A statement of the amount of loan assistance sought.

(3) A statement of the capital development project, including a detailed statement of the cost of the project.

(4) A financial commitment from a responsible source for any cost of the capital development project in excess of the amount requested.

(5) A statement that the loan, if approved, would not supplant funding from private sector sources on commercially reasonable terms.

(6) Any other information required by the department.

(b) Review.--Upon receipt of a completed application, the

department shall investigate and determine all of the following:

(1) If the applicant is an export business.

(2) If the project is a capital development project.

(3) The ability of the applicant to meet and satisfy the debt service as it becomes due and payable.

(4) The existence and sufficiency of collateral for the loan.

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

(6) Number of employment opportunities to be created or preserved by the proposed capital development project.

(7) If the applicant complied with all other criteria established by the department.

(c) Approvals.--If the department is satisfied that all requirements have been met, the department may approve the loan request. A loan approved under this section may not exceed [$350,000] $400,000. The department shall notify the applicant and, if applicable, the area loan organization of its decision. The department shall reserve an amount equal to the principal amount of the loan within the fund or the special account authorized by section 2304(c)(2) (relating to fund and accounts). Prior to providing funds to the applicant, the department shall require the applicant to execute a note and enter into a loan agreement. In addition to the requirements of subsection (d), the loan agreement shall include a provision requiring the recipient to use the loan proceeds to pay the costs of the capital development project. The department may impose other terms and conditions on the recipient if the department determines they are in the best interests of this

Commonwealth, including any of the following:

(1) A provision requiring collateral for any penalty imposed under subsection (f).

(2) A provision requiring the person to be eligible for an insurance policy.

(3) A provision requiring the loan to be guaranteed by the Working Capital Guaranty Program offered by the Ex-Im Bank.

(4) A provision requiring an export credit sales contract insured by an insurance policy.

(d) Loan terms.--A loan agreement entered into in accordance with subsection (c) shall do all of the following:

(1) State the collateral securing the loan. All loans shall be secured by lien positions on collateral at the highest level of priority as may be determined by the department.

(2) State the repayment period as determined by the department.

(3) State the interest rate as determined by the department.

(e) Loan administration.--A loan made under this section shall be administered in accordance with departmental policies and procedures.

(f) Penalty.--

(1) Except as provided in paragraph (2), the department shall impose a penalty upon a recipient if the recipient fails to carry out the export activities specified in its approved application.

(2) The department may waive the penalty required by paragraph (1) if the department determines that the failure

was due to circumstances outside the control of the recipient.

(3) The amount of the penalty imposed under paragraph (1) shall be equal to an increase in the interest rate to 2% greater than the current prime interest rate for the remainder of the loan.

(g) Defaults.--The department may, by foreclosure, take title to a capital development project which it financed if acquisition is necessary to protect a loan made under this section. The department shall pay all costs arising out of the foreclosure and acquisition from money held in the fund or a special account authorized by section 2304(c)(2). The department may, in order to minimize financial losses and sustain employment, lease the capital development project. The department may withdraw money from the fund or a special account authorized by section 2304(c)(2) to purchase first mortgages and to make payments on first mortgages on any capital development project which it financed if purchase or payment is necessary to protect a loan made under this section. The department may sell, transfer, convey and assign the first mortgages and shall deposit any money derived from the sale of any first mortgages in the fund or a special account authorized by section 2304(c)(2).

Section 2. This act shall take effect in 60 days.