

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 167 Session of 2019

INTRODUCED BY DONATUCCI, MURT, LONGIETTI, SOLOMON, ISAACSON, YOUNGBLOOD, KINSEY, SCHLOSSBERG, CALTAGIRONE, ULLMAN, READSHAW, DAVIDSON, HARKINS, FREEMAN, WARREN, HILL-EVANS, CIRESI, MARKOSEK AND DAWKINS, JANUARY 28, 2019

REFERRED TO COMMITTEE ON COMMERCE, JANUARY 28, 2019

AN ACT

1 Amending the act of July 2, 1984 (P.L.555, No.111), entitled "An  
 2 act creating a small business incubator program; providing  
 3 for grants, loans and loan guarantees to small business  
 4 incubators; specifying the conditions of and requirements for  
 5 grants and loans; providing for seed grants; and making  
 6 appropriations," further providing for definitions, for  
 7 creation of program, for incubator grants, loans and loan  
 8 guarantees, for responsibilities of local sponsors, for  
 9 challenge grants for seed capital funds, for general powers  
 10 and duties of the board and for indicators of program impact;  
 11 providing for funding sources; further providing for time  
 12 limit on approvals; and making a related repeal.

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

15 Section 1. The definitions of "local sponsor" or "sponsor"  
 16 and "seed capital fund" in section 2 of the act of July 2, 1984  
 17 (P.L.555, No.111), known as the Small Business Incubators Act,  
 18 are amended and the section is amended by adding a definition to  
 19 read:

20 Section 2. Definitions.

21 The following words and phrases when used in this act shall  
 22 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 \* \* \*

3 "Applicant." A local sponsor.

4 \* \* \*

5 "Local sponsor" or "sponsor." An organization which enters  
6 into a written agreement with the board to establish, operate  
7 and administer a small business incubator facility or to provide  
8 funding to an organization which operates such a facility,  
9 including municipalities, local development districts of the  
10 Appalachian Regional Commission, industrial and commercial  
11 development authorities established pursuant to the act of  
12 August 23, 1967 (P.L.251, No.102), known as the Industrial and  
13 Commercial Development Authority Law, redevelopment authorities  
14 established pursuant to the act of May 24, 1945 (P.L.991,  
15 No.385), known as the Urban Redevelopment Law, municipal  
16 authorities organized pursuant to the act of May 2, 1945  
17 (P.L.382, No.164), known as the Municipality Authorities Act of  
18 1945, or any private nonprofit or for-profit organization  
19 approved by the board, including Ben Franklin Technology  
20 Partners.

21 ["Seed capital fund." A special investment vehicle which  
22 provides equity and other capital to small businesses during the  
23 earliest stages of business growth, including businesses in  
24 incubators.]

25 \* \* \*

26 Section 2. Section 3 of the act is amended to read:

27 Section 3. Creation of program.

28 There is hereby established under the direction of the board  
29 a Statewide grant, loan and loan guarantee program for the  
30 establishment, operation and administration of small business

1 incubators, to be known as the Small Business Incubator Program.

2 Section 3. Section 4(a)(3) and (4) and (c)(1) and (2) of the  
3 act are amended and subsection (c) is amended by adding a  
4 paragraph to read:

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

6 (a) Application.--A local sponsor may submit an application  
7 to the board to obtain a grant, loan or loan guarantee to  
8 establish an incubator. Each application shall:

9 \* \* \*

10 (3) Demonstrate a potential for sustained use of the  
11 incubator facility by eligible tenants, through a market  
12 study or [other means] business plan that identifies  
13 sustainability.

14 (4) Demonstrate the ability to manage and operate the  
15 incubator facility in accordance with section 5, including  
16 ongoing financial responsibilities.

17 \* \* \*

18 (c) Grant and loan conditions.--

19 (1) Grants and loans awarded or guaranteed shall be used  
20 only for the acquisition and leasing of land and buildings,  
21 the construction, rehabilitation and expansion of buildings  
22 or other facilities [and], the purchase of equipment and  
23 furnishings and operational funds not to exceed 20% of the  
24 award, which are necessary for the creation and operation of  
25 the incubator.

26 (2) Grants, loans and loan guarantees may not exceed  
27 [50%] 80% of total eligible project costs, or [\$650,000]  
28 \$800,000, whichever is less. The maximum grant amount awarded  
29 in any project may not exceed [\$240,000. Grants shall be  
30 provided only to projects located in municipalities

1 designated as distressed under the act of July 2, 1984  
2 (P.L.520, No.105), known as the Business Infrastructure  
3 Development Act] 20% of the award.

4 \* \* \*

5 (8) If a business operating within an incubator that is  
6 administered by a local sponsor relocates outside of this  
7 Commonwealth or transfers an ownership interest to an entity  
8 located outside of this Commonwealth, the business shall  
9 repay the local sponsor the full value of services and  
10 assistance the business has received that were funded by  
11 grants, loans or guaranteed loans received by the local  
12 sponsor under this act. If the local sponsor does not utilize  
13 repaid funds to provide services to other businesses in the  
14 incubator, the local sponsor shall return the funds to the  
15 board. If a local sponsor transfers ownership of an incubator  
16 to an entity located outside of this Commonwealth, the local  
17 sponsor shall return all grant funds awarded under this act  
18 to the board.

19 Section 4. Section 5(8) and (9) of the act are amended to  
20 read:

21 Section 5. Responsibilities of local sponsors.

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

26 \* \* \*

27 [(8) Establish policies and criteria for the acceptance  
28 of tenants into the incubator. Retail enterprises, not-for-  
29 profit enterprises (except not-for-profit enterprises engaged  
30 in research and development), wholesale enterprises and

1 personal service enterprises are not permitted as tenants in  
2 incubators funded through this act. Up to 20% of the useful  
3 square footage of such a facility shall be occupied by an  
4 anchor tenant who does not meet these eligibility  
5 requirements.

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

8 Section 5. Section 6 of the act is repealed:

9 [Section 6. Challenge grants for seed capital funds.

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

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

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

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

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

29 (4) List private investment commitments obtained to  
30 date.

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

7 (1) Either:

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

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

25 (2) Investments from the seed capital fund will be made  
26 exclusively in small businesses located in this Commonwealth,  
27 including, but not limited to, tenants of incubators. For the  
28 purposes of this section, small businesses shall not include  
29 businesses of a mercantile or services related nature, but  
30 shall include international export related services,

1 international export related mercantile ventures and advanced  
2 technology or computer related ventures which will increase  
3 the Commonwealth's share of domestic or international  
4 markets.

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

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

12 In the event that recipients of funds cannot demonstrate these  
13 conditions by June 30, 1986, the grants, or the portions thereof  
14 for which the conditions are not satisfied, shall be rescinded  
15 by the board and shall be available to the board to use for  
16 loans and loan guarantees to incubators consistent with section  
17 4.]

18 Section 6. Sections 7 and 8(8) of the act are amended to  
19 read:

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

21 The board shall:

22 (1) Adopt such rules, statements of policy, procedures,  
23 forms and guidelines as may be necessary for the  
24 implementation of this act, including the encouragement of  
25 incubators in economically distressed areas such as State or  
26 federally designated enterprise zones[, municipalities which  
27 meet criteria for distress as identified in section 6 of the  
28 act of July 2, 1984 (P.L.520, No.105), known as the Business  
29 Infrastructure Development Act,] and urban renewal areas  
30 designated in conformity with the act of May 24, 1945

1 (P.L.991, No.385), known as the Urban Redevelopment Law:  
2 Provided, That it is not the intent of this act to limit the  
3 establishment of incubators to such economically distressed  
4 areas.

5 (2) Make loans and loan guarantees or grants or a  
6 combination of loans and grants to local sponsors for  
7 incubators [and award seed capital challenge grants] and, in  
8 the sole discretion of the board, provide for the conversion  
9 of any liens [issued on or after November 1, 1985,] into  
10 grants or into a combination of grants and loans.

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

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

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

25 Section 8. Indicators of program impact.

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

30 \* \* \*

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

5 Section 7. The act is amended by adding a section to read:

6 Section 10. Funding sources.

7 Consistent with 64 Pa.C.S. § 1543 (relating to indebtedness),  
8 the Commonwealth Financing Authority shall have the authority to  
9 incur indebtedness, in the aggregate, as follows:

10 (1) Not to exceed \$20,000,000 for programs established  
11 under this act.

12 (2) Not to exceed \$80,000,000 for the program  
13 established under 64 Pa.C.S. § 1556 (relating to Tax  
14 Increment Financing Guarantee Program).

15 (3) The following apply to proceeds of the indebtedness  
16 authorized under paragraph (1):

17 (i) The proceeds shall be deposited into a  
18 restricted account in the Ben Franklin Technology  
19 Development Authority Fund and transferred from the  
20 authority to the board to be used for programs  
21 established under this act.

22 (ii) The money in the restricted account is  
23 appropriated to the board, on a continuing basis, to be  
24 used for programs established under this act. This  
25 appropriation shall not lapse at the end of any fiscal  
26 year.

27 Section 8. Section 12 of the act is repealed.

28 [Section 12. Time limit on approvals.]

29 No assistance under section 4 shall be approved by the board  
30 after June 30, 1990.]

1 Section 9. Repeals are as follows:

2 (1) The General Assembly declares that the repeal under  
3 paragraph (2) is necessary to effectuate the addition of  
4 section 10(2).

5 (2) 64 Pa.C.S. § 1543(b)(7) is repealed.

6 Section 10. This act shall take effect in 60 days.