

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2398 Session of
2002

INTRODUCED BY BUNT, DALEY, BASTIAN, FORCIER, ARMSTRONG,
M. BAKER, BROWNE, CAPPELLI, COY, DeWEESE, EGOLF, FAIRCHILD,
FEESE, FICHTER, GEORGE, GODSHALL, GORDNER, HENNESSEY, HERMAN,
LAUGHLIN, MANN, MARSICO, McCALL, McGILL, McILHATTAN,
PHILLIPS, PICKETT, RUBLEY, SAYLOR, SOLOBAY, STABACK, STERN,
TIGUE, WALKO, WATSON, ZUG, HERSHEY, HESS, SATHER, ALLEN,
E. Z. TAYLOR, CREIGHTON, ROBERTS, HARHAI, STEELMAN,
R. MILLER, MAJOR, SHANER, MAITLAND, B. SMITH, LUCYK, GRUCELA,
ROSS, THOMAS, SEMMEL, YOUNGBLOOD, FREEMAN, BENNINGHOFF AND
PALLONE, MARCH 7, 2002

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
APRIL 10, 2002

AN ACT

1 Amending the act of June 29, 1996 (P.L.434, No.67), entitled, as
2 amended, "An act to enhance job creation and economic
3 development by providing for an annual financing strategy,
4 for opportunity grants, for job creation tax credits, for
5 small business assistance, for the Small Business Advocacy
6 Council, for a family savings program, for industrial
7 development assistance, for community development bank grants
8 and loans and for tax-exempt bond allocation; conferring
9 powers and duties on various administrative agencies and
10 authorities; further providing for various funds; and making
11 repeals," further providing for small business definitions
12 and loan eligibility and terms.

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

15 Section 1. ~~The definitions of "capital development project"~~ <—
16 ~~and~~ DEFINITION OF "small business enterprise" in section 1301 of <—
17 the act of June 29, 1996 (P.L.434, No.67), known as the Job
18 Enhancement Act, ~~added December 3, 1998 (P.L.788, No.100), are~~ <—

1 IS amended and the section is amended by adding definitions to <—
2 read:

3 Section 1301. Definitions.

4 The following words and phrases when used in this chapter
5 shall have the meanings given to them in this section unless the
6 context clearly indicates otherwise:

7 * * *

8 "Agricultural producer." A person OR ENTITY involved in the <—
9 management and use of a normal agricultural operation for the
10 production of a farm commodity.

11 * * *

12 ~~"Capital development project" or "project." Land, buildings, <—~~
13 ~~equipment and machinery and working capital which is acquired,~~
14 ~~constructed, renovated or used by a small business enterprise.~~

15 ~~(1) As part of a for profit project or venture not of a~~
16 ~~mercantile or service related nature, except for hospitality~~
17 ~~industry projects.~~

18 ~~(2) To bring a small business enterprise into compliance~~
19 ~~with Federal or State environmental laws or regulations or to~~
20 ~~complete an approved remediation project or to permit the~~
21 ~~small business enterprise to adopt generally acceptable~~
22 ~~pollution prevention practices.~~

23 ~~(3) To provide assistance to small business enterprises~~
24 ~~that are recyclers of municipal or commercial waste or that~~
25 ~~are manufacturers using recycled municipal or commercial~~
26 ~~waste materials.~~

27 ~~(4) To assist a small business enterprise with defense~~
28 ~~conversion activities.~~

29 ~~(5) For the manufacture of products to be exported out~~
30 ~~of the United States by a small business enterprise as part~~

~~of a for profit project or venture not of a mercantile or
service related nature, except for export related services
and international export related mercantile ventures or
advanced technology and computer related services and
mercantile ventures, which will increase this Commonwealth's
national or international market shares.~~

~~(6) As part of a for profit project or venture that
meets the requirements of section 1303(a.1) and (a.3).~~

~~* * *~~

"NATURAL DISASTER." AS DEFINED IN 35 PA.C.S. § 7102

<—

(RELATING TO DEFINITIONS).

"Normal agricultural operation." The activities, practices,
equipment and procedures which agricultural producers adopt, use
or engage in in the production and preparation for market of
farm commodities. The term includes new activities, practices,
equipment and procedures consistent with technological
development within the agricultural industry.

* * *

"Small business [enterprises] enterprise." A for-profit
corporation, partnership [or], proprietorship, LIMITED LIABILITY
COMPANY OR OTHER ENTITY which meets the eligibility requirements
established by the department. The term shall include, but is
not limited to, a small business [enterprises] enterprise which:

(1) is located in a small business incubator
[facilities, small business enterprises which are] facility;

(2) is an agricultural [processors and small business
enterprises which manufacture] processor;

(3) is an agricultural producer; or

(4) manufactures apparel products.

* * *

1 Section 2. Section 1303(a.2) and (b) of the act, amended
2 November 17, 1998 (P.L.788, No.100), are amended ~~and the section~~ <—
3 ~~is amended by adding a subsection~~ to read:

4 Section 1303. Eligibility for and terms and conditions of
5 loans.

6 * * *

7 (a.2) Pollution prevention assistance loans.--The Pollution
8 Prevention Assistance Account created under section 1302(b.1)
9 shall provide revolving loans to small [businesses] business
10 enterprises.

11 (1) The loans shall be for the purpose of enabling the
12 small business enterprise to adopt or install pollution
13 prevention equipment or processes to:

14 (i) Reduce or reuse raw materials onsite.

15 (ii) Reduce the production of waste.

16 (iii) Reduce energy consumption.

17 (2) The Pollution Prevention Assistance Account shall
18 not invest on the basis of direct financial return and shall
19 not be held to the loan loss standards of commercial lenders.
20 Loans shall be for the purpose of reducing pollution through
21 source reduction technologies or processes.

22 (3) A loan under this subsection may not exceed the
23 lesser of:

24 (i) \$50,000; or

25 (ii) 75% of eligible project costs.

26 (4) Loans under this subsection shall have an interest
27 rate of 2% per year and a maximum repayment term of seven
28 years.

29 (5) An industrial resource center receiving funds under
30 the act of July 2, 1993 (P.L.439, No.64), known as the Ben

Franklin/IRC Partnership Act, may utilize the account to provide assistance to a small business enterprise for which a loan application has been made.

(6) Loans under this subsection shall be used to further the goal of pollution prevention through the purchase and installation of equipment to make operational changes and modify production practices.

~~(a.3) Loans to small business enterprises which are agricultural producers.~~

~~(1) The department may provide loans to small business enterprises which are agricultural producers. Loans shall be made in accordance with the provisions of this chapter except as follows:~~

~~(i) The provisions of subsection (b) relating to required increases in employment shall not apply to loans made under this subsection.~~

~~(ii) The department may authorize flexible repayment terms and an interest rate of not less than 2%.~~

~~(iii) The department may utilize additional area loan organizations, including community development financial institutions, to receive loan applications and administer loans.~~

~~(iv) The department may use its best judgment to identify and secure collateral.~~

~~(2) The department and area loan organizations shall not make loans under this subsection 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 for the purpose of enhancement and growth of normal agricultural operations.~~

1 (b) Terms and conditions.--

2 (1) The department may make advances from the Small
3 Business First Fund, subject to the terms, conditions and
4 restrictions provided under this chapter, to area loan
5 organizations for the purpose of making loans to eligible
6 small business enterprises for capital development projects
7 which demonstrate a substantial likelihood of creating or
8 preserving employment opportunities[.] OR, IN THE CASE OF A <—
9 SMALL BUSINESS ENTERPRISE THAT IS AN AGRICULTURAL PRODUCER,
10 LOANS WHICH DEMONSTRATE A SUBSTANTIAL LIKELIHOOD OF THE
11 ENHANCEMENT AND GROWTH OF NORMAL AGRICULTURAL OPERATIONS. All
12 loans, EXCEPT LOANS PROVIDED TO A SMALL BUSINESS ENTERPRISE <—
13 WHICH IS AN AGRICULTURAL PRODUCER, shall be limited to
14 projects that demonstrate the creation or preservation of one
15 job for every \$25,000 received from the Small Business First
16 Fund.

17 (2) No loans shall be made which would do any of the
18 following:

19 (i) Cause, aid or assist in, directly, the
20 relocation of any business operations from one part of
21 this Commonwealth to another unless there is at least a
22 25% net increase in employment.

23 (ii) Refinance any portion of the total project cost
24 or other existing loans or debt.

25 (iii) Finance projects located outside the
26 geographic boundaries of this Commonwealth.

27 (iv) Provide funds, directly or indirectly, for
28 payment, distribution or as loan owners, partners or
29 shareholders of the small business enterprise, except as
30 ordinary compensation for services rendered.

(v) Provide funds for speculation in any kind of property, real or personal, tangible or intangible.

(3) All loans shall carry an interest rate and term and 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.

SECTION 3. SECTION 1310 OF THE ACT IS AMENDED TO READ:

<—

SECTION 1310. [TRANSITIONAL] ELIGIBILITY PROVISIONS.

THE FOLLOWING ELIGIBILITY REQUIREMENTS AND ELIGIBLE USES SHALL APPLY TO ALL REQUESTS FOR FUNDING [RECEIVED AFTER THIS CHAPTER BECOMES EFFECTIVE AND BEFORE SUBMISSION OF THE FIRST ANNUAL FINANCING STRATEGY]:

(1) A SMALL BUSINESS ENTERPRISE WITH 100 FULL-TIME EMPLOYEES OR LESS THAT PROPOSES TO UNDERTAKE A CAPITAL DEVELOPMENT.

(2) (I) THE MAXIMUM LOAN AMOUNT FOR LAND, BUILDINGS AND MACHINERY AND EQUIPMENT IS \$200,000 OR 50% OF THE TOTAL ELIGIBLE PROJECT COSTS, WHICHEVER IS LESS. THE MAXIMUM LOAN AMOUNT FOR WORKING CAPITAL IS \$100,000 OR 50% OF THE TOTAL ELIGIBLE PROJECT COSTS, WHICHEVER IS LESS.

(II) LOANS USED FOR REAL ESTATE SHALL HAVE A REPAYMENT PERIOD OF UP TO TEN YEARS. LOANS USED FOR MACHINERY AND EQUIPMENT SHALL HAVE A REPAYMENT PERIOD OF UP TO SEVEN YEARS. LOANS USED FOR WORKING CAPITAL SHALL HAVE A REPAYMENT PERIOD OF UP TO THREE YEARS. IN PROJECTS WHERE TWO OR MORE USES OF FUNDS ARE PLANNED, THE LOAN TERMS MAY BE BLENDED.

(III) INTEREST RATES SHALL [BE FIXED AT 5%.] NOT EXCEED 5%, EXCEPT AS PROVIDED IN CLAUSE (IV).

(IV) LOANS MADE TO A SMALL BUSINESS ENTERPRISE THAT

1 IS AN AGRICULTURAL PRODUCER SHALL BE MADE AT AN INTEREST
2 RATE OF NOT LESS THAN 2% FOR THE TERM OF THE LOAN IF A
3 DECLARATION UNDER 35 PA.C.S. § 7301(C) (RELATING TO
4 GENERAL AUTHORITY OF GOVERNOR) IS IN EFFECT FOR A NATURAL
5 DISASTER. A SMALL BUSINESS ENTERPRISE THAT IS AN
6 AGRICULTURAL PRODUCER MUST BE PHYSICALLY LOCATED IN THE
7 AREA OF THE NATURAL DISASTER AND MUST MAKE LOAN
8 APPLICATION WITHIN NINE MONTHS OF A DECLARATION SPECIFIED
9 IN THIS SUBPARAGRAPH.

10 [(IV)] (V) ALL LOANS MUST BE ADEQUATELY SECURED.

11 (3) (I) APPLICATIONS FOR ASSISTANCE UNDER THE CAPITAL
12 LOAN FUND ACT WHICH HAVE BEEN APPROVED PRIOR TO THE
13 EFFECTIVE DATE OF THIS CHAPTER WILL BE PROCESSED IN
14 ACCORDANCE WITH THE ACT OF JULY 2, 1984 (P.L.545,
15 NO.109), KNOWN AS THE CAPITAL LOAN FUND ACT. APPLICATIONS
16 FOR ASSISTANCE WHICH HAVE BEEN RECEIVED BUT WHICH HAVE
17 NOT BEEN APPROVED PRIOR TO THE EFFECTIVE DATE OF THIS
18 CHAPTER WILL BE EVALUATED AND PROCESSED IN ACCORDANCE
19 WITH THIS CHAPTER.

20 (II) APPLICATIONS FOR ASSISTANCE UNDER SECTION 7.13
21 OF THE ACT OF JANUARY 8, 1960 (1959 P.L.2119, NO.787),
22 KNOWN AS THE AIR POLLUTION CONTROL ACT, SECTION 709 OF
23 THE ACT OF JULY 6, 1989 (P.L.169, NO.32), KNOWN AS THE
24 STORAGE TANK AND SPILL PREVENTION ACT, AND THE RECYCLING
25 INCENTIVE DEVELOPMENT ACCOUNT WHICH HAVE BEEN APPROVED
26 PRIOR TO THE EFFECTIVE DATE OF THIS CHAPTER SHALL BE
27 PROCESSED IN ACCORDANCE WITH THOSE RESPECTIVE PROVISIONS.
28 APPLICATIONS FOR ASSISTANCE WHICH HAVE BEEN RECEIVED BUT
29 WHICH HAVE NOT BEEN APPROVED PRIOR TO THE EFFECTIVE DATE
30 OF THIS CHAPTER SHALL BE EVALUATED AND PROCESSED IN

1 ACCORDANCE WITH THIS CHAPTER.

2 SECTION 4. THE ACT IS AMENDED BY ADDING A SECTION TO READ: <—

3 SECTION 5106.2. REPORTING TO GENERAL ASSEMBLY.

4 IN ADDITION TO THE ANNUAL FINANCING STRATEGY SUBMITTED TO THE
5 GENERAL ASSEMBLY, IN ACCORDANCE WITH SECTION 301, THE DEPARTMENT
6 SHALL REPORT TO THE GENERAL ASSEMBLY IN JANUARY AND JUNE FOR
7 EACH OF THEIR PROGRAMS ON THE NUMBER AND TYPE OF REQUESTS FOR
8 DEPARTMENT FINANCING DURING THE CURRENT FISCAL YEAR, THE NUMBER,
9 AMOUNT AND DESCRIPTION OF APPROVALS AND THE AVAILABLE FINANCING
10 STILL REMAINING.

11 Section ~~3~~ 5. This act shall take effect immediately. <—