

JOB ENHANCEMENT ACT - OMNIBUS AMENDMENTS
Act of Dec. 9, 2002, P.L. 1682, No. 213
Session of 2002
No. 2002-213

Cl. 12

SB 1370

AN ACT

Amending the act of June 29, 1996 (P.L.434, No.67), entitled, as amended, "An act to enhance job creation and economic development by providing for an annual financing strategy, for opportunity grants, for job creation tax credits, for small business assistance, for the Small Business Advocacy Council, for a family savings program, for industrial development assistance, for community development bank grants and loans and for tax-exempt bond allocation; conferring powers and duties on various administrative agencies and authorities; further providing for various funds; and making repeals," further providing for definitions, for the Pollution Prevention Assistance Account and for eligibility and terms and conditions of loans; providing for job training; further providing for the power and authority for the Pennsylvania Economic Development Financing Authority; recodifying the Machinery and Equipment Loan Fund Act; further providing for tax-exempt bond allocation and for loan eligibility; and making repeals.

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

Section 1. The definitions of "capital development project" or "project," "export activity" and "small business enterprise" in section 1301 of the act of June 29, 1996 (P.L.434, No.67), known as the Job Enhancement Act, amended or added June 24, 1997 (P.L.247, No.23), November 17, 1998 (P.L.788, No.100), October 2, 2002 (P.L.804, No.115), and October 2, 2002 (P.L.836, No.120), are amended and the section is amended by adding definitions to read:

Section 1301. Definitions.

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

* * *

"Agricultural producer." A person or entity involved in the management and use of a normal agricultural operation for the production of a farm commodity.

* * *

"Capital development project" or "project." Land, buildings, equipment and machinery and working capital which is acquired, constructed, renovated or used by a small business enterprise:

(1) As part of a for-profit project or venture not of a mercantile or service-related nature, except for hospitality

industry projects **and except as otherwise provided in section 1303(a.1) .**

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

(3) To provide assistance to **a small business [enterprises that are recyclers] enterprise which is a recycler** of municipal or commercial waste or [that are manufacturers] **which is a manufacturer** using recycled municipal or commercial waste materials.

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

(5) For the manufacture of products to be exported out 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).

(7) To assist in the start-up or expansion of a for-profit or not-for-profit child day-care center subject to licensure by the Commonwealth.

"Child day-care center." Any premises in which child day care is provided simultaneously for seven or more children who are not related to the provider.

* * *

"Export activity." An activity undertaken by [an] a small business enterprise related to exports of goods and services outside of the United States . [The term includes manufacturing, assembling and like operations.]

* * *

"Small business enterprise." A for-profit corporation, partnership, 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 enterprise which:

- (1) is located in a small business incubator facility;**
- (2) is an agricultural processor;**
- (3) is an agricultural producer; [or]**
- (4) manufactures apparel products[.]; or**
- (5) is a for-profit or not-for-profit child day-care center subject to licensure by the Commonwealth.**

* * *

Section 2. Sections 1302(b.1), 1303(a.1) and (a.2) and 1304(a.1) and (a.2) of the act, amended or added November 17, 1998 (P.L.788, No.100), are amended to read:

Section 1302. Small Business First Fund and Pollution Prevention Assistance Account.

* * *

(b.1) Pollution Prevention Assistance Account.--There is

hereby created within the Small Business First Fund a Pollution Prevention Assistance Account to provide revolving loans to small [businesses] **business enterprises** that employ 100 or fewer individuals[, that operate from a stationary source] and that adopt or install pollution prevention or energy-efficient equipment or processes. The account shall be administered by the department. All appropriations made for the purposes of this account and all proceeds from loan repayments, including interest, and any and all other deposits, payments and contributions from any other source made available to the department for the purposes of this account shall be deposited into this account.

* * *

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

* * *

(a.1) Loans to small business enterprises in certain areas.--

(1) The department may provide loans to small business enterprises located in distressed communities **which are in the business-to-public service, mercantile, commercial or point-of-sale retail business sectors in accordance with conditions or criteria established by the department in guidelines adopted for these loans** . Loans shall be made in accordance with the provisions of this chapter except that:

[(i) Loans may be made to mercantile or service-related enterprises approved by the department.]

(ii) The [provisions of subsection (b) relating to required increases in employment shall not apply to loans made under this subsection] **small business enterprise must agree to retain, at a minimum, jobs in existence as of the date of loan application** .

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

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

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

(2) Distressed communities shall include:

(i) Any census tract **or other specifically defined geographic area** in which:

(A) there is a median income below 80% of the median income for this Commonwealth or the United States;

(B) 20% or more of the population is below the poverty level by family size published by the Bureau of the Census; or

(C) there is an unemployment rate 50% higher than the national average.

(ii) A Keystone Opportunity Zone.

(iii) Any other geographic area designated by the department as distressed. The designation shall be published in the Pennsylvania Bulletin.

(3) The department and area loan organization 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 establishing a strong economic base and promoting entrepreneurial activity within the distressed community.

(4) In order to receive a loan under this subsection, a small business enterprise must demonstrate a direct impact on the community in which it is located, on residents of that community or on the local and/or regional economy. The department shall establish criteria that will assist the small business enterprise in making this demonstration.

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

(1) The loans shall be for the purpose of enabling [the small business] **a small business enterprise** to adopt or install pollution prevention equipment or processes to:

- (i) Reduce or reuse raw materials onsite.
- (ii) Reduce the production of waste.
- (iii) Reduce energy consumption.

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

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

- (i) [\$50,000] **\$100,000 ;** or
- (ii) 75% of eligible project costs.

(4) Loans under this subsection shall have an interest rate of 2% per year and a [maximum] repayment term [of seven] **not to exceed ten** years.

(5) An industrial resource center receiving funds under the act of [July 2, 1993 (P.L.439, No.64), known as the Ben Franklin/IRC Partnership Act] **June 22, 2001 (P.L.400, No.31), known as the Industrial Resources Center 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.

* * *

Section 1304. Application and administration.

* * *

[(a.1) Distressed communities.--An area loan organization designated to administer loans to distressed communities under section 1303(a.1) shall provide documentation that the small business enterprise is located in a distressed community as required by the department.]

(a.2) Pollution prevention assistance loans.--

(1) Applications for loans from the Pollution Prevention

Assistance Account established under section 1302(b.1) shall be on a form prescribed by the department and shall be reviewed under subsection (b)(2). The Department of Environmental Protection shall assist the department and provide technical assistance with application review.

(2) The department, an area loan organization or an industrial resource center may charge fees, costs, service charges, loan commitment fees or other expenses not to exceed [1%] **5%** of the loan amount.

* * *

Section 3. Section 1311(e), (g) and (h) of the act, added June 24, 1997 (P.L.247, No.23), are amended and the section is amended by adding a subsection to read:

Section 1311. Export Financing Loan Fund; loans and applications; powers and duties.

* * *

(e) Conditions.--A loan must comply with all of the following:

[(1) Be to a company eligible for a policy.

(2) Be guaranteed by the Working Capital Guaranty Program offered by the Ex-Im Bank or be on an export credit sales contract insured by a policy.]

(3) Be limited to [companies that have facilities within this Commonwealth which are involved in export activities] **the financing of export activities that take place within this Commonwealth .**

(4) Be based on an export contract that requires payment in United States dollars.

[(5) Be for the purpose of financing export activity.]

(6) Be limited to companies with 250 or fewer full-time [equivalent] employees.

(e.1) Additional conditions.--At the discretion of the department, a loan may also be required to contain one or both of the following conditions:

(1) The company is eligible for a policy.

(2) The loan is guaranteed by the Working Capital Guaranty Program offered by the Ex-Im Bank or be on an export credit sales contract insured by a policy.

* * *

(g) Restrictions.--Export Financing Loan Fund assistance shall not exceed \$350,000 for any individual project [or 50% of the eligible project costs, whichever is less]. A loan must not supplant funding which is otherwise available from private sector sources on commercially reasonable terms.

(h) Terms.--A loan shall have a term, rate of interest, transaction size and other business conditions that comply with the requirements [of the Ex-Im Bank and any other requirements] of the department.

* * *

Section 3.1. Section 2702 of the act, added November 17, 1998 (P.L.788, No.100), is amended by adding a definition to read:

Section 2702. Definitions.

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

context clearly indicates otherwise:

* * *

"First-time farmer." As defined in section 147(c) (2) (C) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 147(c) (2) (C)).

* * *

Section 3.2. Sections 2703 and 2704 of the act, added November 17, 1998 (P.L.788, No.100), are amended to read:

Section 2703. Selection of projects.

(a) Criteria.--In selecting projects for allocation of the tax-exempt bond authority of the Commonwealth, the department shall endeavor to best serve the purposes set forth in section 2701 in accordance with the requirements of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.). In so doing, the secretary may, among other things, consider all of the following:

- (1) The number of net new jobs to be created and the number of jobs to be preserved.
- (2) The economic distress of the county, municipality or region as determined by its employment.
- (3) The geographical diversity within this Commonwealth.
- (4) The amount of private funds to be leveraged by the tax-exempt bond financing.
- (5) Coordination with community and economic development plans of the Commonwealth and its counties, municipalities and regions.
- (6) Whether the community has been designated a Federal disaster relief area or the community's business district has been significantly damaged as a result of fire or natural disaster.

(b) Tax-exempt bond authority set-aside.--Either at the beginning of or at any time during the course of each year, the department may set aside such tax-exempt bond authority as the department, in consultation with the Secretary of the Budget, determines for use during the year for the various categories of tax-exempt bonds such as manufacturing facilities, enterprise zone facilities, exempt facilities, mortgage revenue bonds, student loan bonds , **first-time farmers** and redevelopment bonds.

Section 2704. Allocation.

(a) Application by agency.--An agency may apply to the department for an allocation for a project to be undertaken by the agency consistent with the purposes set forth in section 2701. The department, in consultation with the agency and the Secretary of the Budget, shall determine what portion of an allocation request the agency will receive and may establish deadlines for the use of the allocation. A decision on the application shall be provided by the department within 30 days from the date that the application for an allocation is made to the department. Nothing in this chapter shall prevent an agency from applying for additional allocations for projects throughout the year. Nothing in this chapter shall affect the rights of constitutional home rule cities to receive allocations under section 146(e) (3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 146(e) (3)).

(b) Application by qualified local issuers.--A qualified

local issuer may apply to the department for an allocation for a project consistent with purposes set forth in section 2701 with respect to which the qualified local issuers are authorized by the laws of the Commonwealth to issue a tax-exempt bond. [A]

Except as set forth in subsection (d.1), a qualified local issuer shall apply directly to the department, and the department shall determine what portion of an allocation request a [particular authority organized by a county or other political subdivision] **qualified local issuer** will receive.

(c) Recapture of unused allocation.--A portion of an allocation provided under subsection (a) [or] , (b) **or (d.1)** which is not used before the earlier of the end of the calendar year or the deadline set by the department under subsection (a), including an extension by the department, shall be recaptured for reallocation by the department in consultation with the Secretary of the Budget.

(d) Allocations to Pennsylvania Housing Finance Agency.--As provided by section 501-A.1 of the act of December 3, 1959 (P.L.1688, No.621), known as the Housing Finance Agency Law, an allocation for a mortgage revenue bond shall only be made by the department to the Pennsylvania Housing Finance Agency, which may reallocate a mortgage revenue bond under the Housing Finance Agency Law. The department may make an allocation for a qualified multifamily residential facility to the Pennsylvania Housing Finance Agency, the Pennsylvania Economic Development Financing Authority or a qualified local issuer. An allocation for a qualified multifamily residential facility made to the Pennsylvania Housing Finance Agency may be reallocated in whole or in part by the Pennsylvania Housing Finance Agency to a qualified local issuer.

(d.1) First-time farmers.--An allocation for first-time farmer projects shall be made by the department to the Department of Agriculture, which may reallocate to qualified local issuers. A qualified local issuer must apply directly to the Department of Agriculture, and the Department of Agriculture shall determine what portion of an allocation request a qualified local issuer shall receive. The Department of Agriculture has the authority to establish by regulation the criteria under which a qualified local issuer may receive allocation for a first-time farmer project. The criteria must be consistent with Federal law. By June 30 and December 31 of each year, the Department of Agriculture shall provide information to the department on allocations provided to qualified local issuers for first-time farmer projects, consistent with the information set forth in section 2706(a) (2) .

(e) Carryforward of unused authority.--The department shall provide for the carryforward of any unused tax-exempt bond authority at the close of a year in a manner the department determines will best preserve the ability to use the allocation to carry out the purposes of this chapter. In providing for the carryforward, there shall be a presumption that ability to carry out the purposes of this chapter will be best maintained if carryforwards of unused tax-exempt bond authority are reserved for agencies.

Section 4. The act is amended by adding chapters to read:

CHAPTER 29

CUSTOMIZED JOB TRAINING PROGRAM

Section 2901. Definitions.

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

"Applicant." Any of the following:

- (1) A local education agency.
- (2) An industrial resource center.
- (3) An economic development organization.
- (4) A greenhouse.
- (5) A private company.
- (6) A local work force investment board.

"Capital investment." An expenditure for land, buildings, renovations, machinery and equipment which is directly related to the need for the proposed training.

"Economic development organization." An entity certified by the department. The term includes "area loan organizations" and "industrial development corporations" as defined in section 2301.

"Educational institution." Any of the following:

- (1) Area vocational-technical schools.
- (2) Community and junior colleges.
- (3) Intermediate units.
- (4) Licensed private/proprietary business and trade schools.
- (5) Public school districts.
- (6) State or private colleges or universities.

"Greenhouse." A nonprofit organization recognized under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) which is formed for the express purpose of creating university/business partnerships to advance science and technology and to support economic and work force development.

"Industrial resource center." An industrial resource center as defined in the act of June 22, 2001 (P.L.400, No.31), known as the Industrial Resources Center Partnership Act.

"Labor organization." An organization, agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with disputes between an employer and its employees involving grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work. The term does not include an organization, agency, committee or plan which practices discrimination in membership because of race, color, creed, national origin, sex or political affiliation.

"Local education agency." An educational institution located in the Commonwealth and certified by the Department of Education.

"Local work force investment board." An entity recommended for certification by the Pennsylvania Workforce Investment Board and certified by the Governor in accordance with the act of December 18, 2001 (P.L.949, No.114), known as the Workforce Development Act.

"Private company." A business, professional service company

or other enterprise. The term may include a group of two or more private companies operating as a consortium in order to take advantage of a common training program. The term shall not include point-of-sale retail businesses.

"Program." The Customized Job Training Program established under this chapter.

"Trainee." An individual who is an employee or prospective employee and is enrolled in an eligible training program which is designed to enable the individual to obtain or retain employment.

"Training program." A systematic program which is designed to provide a trainee with the skills and knowledge necessary to meet a private company's or labor organization's specifications for an occupation or trade, the successful completion of which results in one of the following:

- (1) The trainee being employed or continuing to be employed full time by that private company.
- (2) A trainee receiving instruction or training related to an occupation with a shortage of skilled workers or a targeted industry cluster as referred in section 2905(3)(i). The program may involve instruction within a local education agency, within a private company or on-the-job training, within a training program of a labor organization, through technology-based instruction or any combination thereof.

Section 2902. Program.

(a) Program continuation.--The customized job training program within the department is continued and reestablished. Funds appropriated to the department for the program shall be used to provide grants for training programs.

(b) Department responsibilities.--The department shall do all of the following:

- (1) Administer the program.
- (2) Review, approve and award grants to applicants in accordance with sections 2904 and 2905.
- (3) Enter into one or more partnerships with one or more local education agencies or other training providers in accordance with section 2907.
- (4) Establish, at the beginning of each fiscal year, a reserve not to exceed 25% of the funds appropriated to the department for the program for the use of small business applicants. Any uncommitted funds in the reserve after March 1 of any fiscal year may be made available to any applicant.
- (5) Establish a private matching fund requirement for applicants. The department shall establish the private matching fund requirement for applicants which are private companies or labor organizations at not less than 25% of the total eligible training project cost. The department may establish different matching fund requirements for a small business enterprise as defined in section 1301 and a labor organization.

Section 2903. Applications.

(a) Provisions of application.--An applicant may submit an application to the department for a grant to fund a training program in accordance with the following:

- (1) If an application is submitted by an industrial

resource center or economic development organization, the industrial resource center or economic development organization may apply for a grant on behalf of a private company, greenhouse or labor organization. An economic development organization may not serve as the direct training provider of the trainees.

(2) If an application is submitted by a local work force investment board, the local work force investment board may apply for a grant only on behalf of projects which promote local education agency and private company partnerships or private company and private company partnerships.

(3) If an application to train entry-level employees is submitted by or on behalf of a private company, the applicant shall demonstrate that the private company has contacted the local work force investment board and the local county board of assistance to solicit referrals of candidates for the training program.

(4) If an application is submitted by any other person, the application shall satisfy any requirements established by the department.

(b) Requirements of application.--An application shall:

(1) Demonstrate that the applicant considered other available resources, including private sector funds, other State or local agency training programs or funds made available under the Workforce Investment Act of 1998 (Public Law 105-200, 112 Stat. 936) or such other Federal programs which provide funds for employment training.

(2) Contain a description of the proposed training or instructional program to be carried out.

(3) Disclose if an applicant intends to contract with other organizations or individuals for the provision of all or a portion of the services to be provided and, if disclosed, contain a request to allocate a portion of the grant from the applicant to the subcontractor.

(4) Include a written commitment from the applicant to invest private matching funds in the training project.

Section 2904. Review of applications.

The department shall review an application and may request from the applicant and its training provider such additional information and records as it deems necessary to carry out its responsibilities under this chapter.

Section 2905. Approval of applications and award of grants.

The department may approve and award grants to applicants in accordance with all of the following:

(1) The department must find that the applicant has satisfied the applicable matching fund requirement and that the grant will be used by the applicant to provide training or instruction only to Commonwealth residents.

(2) The department must find that the grant will result in any of the following objectives:

(i) The location or expansion of a private company or greenhouse within this Commonwealth with the creation of jobs paying competitive wages and the private company or greenhouse making capital expenditures.

(ii) The expansion or upgrade of existing jobs which

result in increased wages for the jobs.

(iii) The retention of jobs in this Commonwealth which would otherwise be lost.

(iv) The promotion of local education agency and private company partnerships and private company and private company partnerships if a direct connection between the development of skills and subsequent employment by one or more private companies can be demonstrated.

(v) The promotion of efforts by a labor organization to upgrade the skills of its members.

(3) The department shall give priority to those applications which have any of the following characteristics:

(i) The application would establish a training program determined by the department to be in a growth industry vital to this Commonwealth's competitiveness. These industries include: agribusiness, advanced manufacturing, advanced materials, life sciences, biotechnology and health care, environmental technology and information technology.

(ii) The application is submitted on behalf of a private company or labor organization which is located:

(A) in a municipality in which the average unemployment rate in the most recently completed calendar year is above the Statewide average unemployment rate for the same period;

(B) in a State-designated enterprise zone; or

(C) in a municipality or region which has suffered a significant loss of jobs due to one or more major plant closings, layoffs or natural or man-made disaster.

(iii) The application is submitted by or on behalf of a private company which plans to create 50 or more jobs and which is making a capital investment of at least \$1,000,000.

(4) The department may determine that the grant will be used by the applicant to reimburse the cost of training. Costs may include instructional costs, costs of instructional or training material or software, costs associated with tuition reimbursement and reasonable administrative costs as determined by the department.

Section 2906. Limitations.

(a) Department.--The department may not do any of the following:

(1) Award grants under this chapter which in the aggregate exceed the amount of the annual appropriations to the department for the program.

(2) Award more than 10% of the funds appropriated to the program in any one fiscal year to any one private company, greenhouse or labor organization, including any affiliates thereof.

(3) Award a grant to or on behalf of any private company or labor organization, including any affiliates thereof, for more than two successive fiscal years and for no more than three out of every five fiscal years.

(b) Recipients.--A recipient of a grant may not do any of the following:

(1) Use a grant to do any of the following:

(i) Pay wages of trainees during training.

(ii) Pay any costs associated with building construction or renovation or the acquisition, upgrade or installation of equipment or machinery, including computer equipment.

(2) Use a grant to reduce the work force or displace workers of a private company prior to the commencement of a training program except because the introduction of new manufacturing techniques, technology and modernization may lead to short-term reductions in a private company's work force. The secretary may waive this grant limitation if the long-term economic benefits to be gained by the private company significantly exceed the short-term detriment to its work force.

(3) Use a grant to violate any conditions of an existing collective bargaining agreement.

(4) Use a grant for point-of-sale retail job training.

Section 2907. Partnerships.

If the department determines that a training program is more effectively delivered through a partnership, the department may enter into partnership agreements with one or more local education agencies or other training providers to provide the training program. The training programs shall consist of basic and entry-level skills, technology skill training, training related to job retention or other specified training assistance. Under a partnership arrangement, the department may limit the number and category of applicants which may submit applications for assistance and may establish minimal standards and requirements for project eligibility. These requirements may be separate and distinct from the requirements established under this chapter except that the provision of section 2906 shall apply to all training programs funded under this chapter.

Section 2908. Compliance with statutes and collective bargaining agreements.

The department shall require each person receiving a grant under this chapter to comply with applicable Federal and State statutes governing employment discrimination, minority recruitment, minimum or prevailing wages, worksite safety and procurement practices. The department shall require each private company receiving a grant under this chapter to certify that its training program does not abridge any contractual agreement between the private company and the collective bargaining representative of its employees.

Section 2909. Penalties and investigations.

(a) Private company.--Unless the department determines that a private company's failure is due to circumstances outside the control of the private company, the private company shall be liable to repay all or part of the amount of a grant awarded under this chapter if the private company does any of the following:

(1) Fails to create the number of jobs specified in its agreement with or commitment to the department.

(2) Fails to make the amount of capital investment specified in the application to the department.

(3) Fails to substantially carry out the training program approved by the department.

(b) Applicants.--An applicant or subcontractor that fails to provide for or to perform a training program approved by the department may be required to repay to the department any funds it received under a grant awarded by the department.

(c) Investigation.--Upon receiving any complaint from a private company, greenhouse, labor organization or trainee as to the inadequacy of training received, the department may initiate an investigation and take appropriate action, including the recovery of grant funds expended.

CHAPTER 30

MACHINERY AND EQUIPMENT LOAN FUND

Section 3001. Scope.

This chapter deals with the Machinery and Equipment Loan Fund.

Section 3002. Definitions.

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

"Business enterprise." A for-profit corporation, partnership or proprietorship.

"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.

"Fund." The Machinery and Equipment Loan Fund created and established by this chapter.

"Normal agricultural operation." The term shall have the same meaning as given to it in section 2 of the act of June 10, 1982 (P.L.454, No.133), entitled "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances."

"Production agriculture." The management and use of a normal agricultural operation for the production of a farm commodity.

Section 3003. Machinery and Equipment Loan Fund.

(a) Creation.--There is hereby created a special account in the Treasury Department, to be known as the Machinery and Equipment Loan Fund, to which shall be credited all program appropriations made by the General Assembly, all proceeds from loan repayments and any and all other deposits, payments or contributions from any other source made available to the fund. The fund shall operate as a revolving fund whereby all appropriations, payments and interest made thereto may be applied and reapplied to the purposes of this chapter.

(b) Credits to fund.--All appropriations, deposits and contributions made to the fund shall be immediately credited in full to the fund, and earnings on the moneys held in the fund shall also be credited to the fund for the purposes of this chapter.

Section 3004. Eligibility for loans; terms and conditions.

(a) Loans; general rules.--The secretary shall make advances

from the fund, subject to the terms, conditions and restrictions provided under this chapter, for the purpose of making loans to business enterprises involved in industrial processes, mining, manufacturing, production agriculture or other industrial sectors, as defined by the department, to acquire and install new machinery and equipment or upgrade existing machinery and equipment. All loans shall be subject to the following conditions:

(1) Be for eligible firms under the provisions of this chapter.

(2) Have a maximum loan ceiling of \$500,000 or 50% of the cost of the project, whichever is less.

(3) Be limited to the purchase and installation of new equipment and machinery or the upgrade of existing machinery and equipment.

(4) Except for loans made to business enterprises involved in production agriculture, be limited to projects that demonstrate the creation or retention of one job for every \$25,000 received from the fund.

(5) Have an interest rate which shall be established by the secretary based upon the current and longer term unemployment levels of the region of this Commonwealth within which the project is located.

(6) Have a term of not in excess of ten years or the useful life of the machinery or equipment purchased or upgraded, whichever is less.

(b) Restrictions.--No loans shall be made that do any of the following:

(1) Cause, aid or assist in, directly or indirectly, the relocation of any business operation from one part of this Commonwealth to another unless there is at least a 25% increase in net employment.

(2) Supplant funding that is otherwise available expeditiously from private sector sources on commercially reasonable terms.

(3) Be for the purpose of refinancing any portion of the total project cost or other existing loans or debt.

(4) Be for the purpose of financing projects located outside the geographic boundaries of this Commonwealth.

(5) Be for the purpose of paying off a creditor that is inadequately secured and is in a position to sustain a loss.

(6) Be for the purpose of repaying a debt owed to a small business investment company.

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

(c) Security.--All loans shall be secured by liens on the equipment purchased and other sufficient collateral as determined by the secretary.

Section 3005. Application and administration.

(a) Procedures.--Application and administration procedures for fund loans shall be established by the secretary.

(b) Receipt.--The secretary shall receive applications from eligible firms for machinery and equipment loans. Applications shall be made to the secretary in the form and manner as the department may require.

(c) Investigation.--Upon receipt of the application, the secretary shall investigate and review the application and either approve or disapprove the loan application by proper action of the department. The decision of the secretary shall be based, in whole or in part, upon the following criteria:

- (1) Ability of the applicant to meet and satisfy all debt service as it becomes due and payable.
- (2) Sufficiency of available collateral, including satisfactory lien positions on real and personal property.
- (3) Eligibility of the applicant as a business enterprise involved in industrial processes, manufacturing, mining, production agriculture or other industrial sectors as defined by the secretary.
- (4) Sufficient evidence that funds shall be used only to acquire and install new equipment and machinery or upgrade existing equipment and machinery.
- (5) Capital need of the applicant.
- (6) Conformity of the project to the provisions of this chapter.
- (7) Relevant criminal and credit history and ratings of applicant as determined from outside credit reporting services and other sources.
- (8) Number of net employment opportunities created and retained by the proposed project.
- (9) Supporting evidence that loan project will increase the firm's competitiveness and value added within its respective industry.
- (10) Explanation of how loan will aid the Commonwealth in its efforts to assist business enterprises to increase their productivity and improve the future competitive position of this Commonwealth's industries.
- (11) Compliance with the loan amount limitations provided for machinery and equipment loans.
- (12) Payment to date of all tax obligations due and owing to the Commonwealth or any political subdivision thereof.
- (13) Conformity of all aspects of the loan transaction with the substantive and procedural provisions of this chapter and regulations promulgated hereunder.
- (14) Such information and documentation as the secretary shall require.

(d) Notification.--The secretary shall notify the applicant of final approval or disapproval of the loan application within a reasonable period of time following 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 fund and advance the sum to the recipient. The advance shall be made available in the form of a loan transaction, which loan shall be evidenced by a note executed by the recipient and secured in a manner as the secretary shall require in conformity in all respects to the loan as approved by the secretary.

(e) Policy requirements and report.--All loans shall be administered and monitored by the department in accordance with the policies and procedures prescribed by the secretary. On or before June 30 each year, the secretary shall prepare a report

that includes the following:

- (1) Each outstanding loan.
- (2) The date of approval.
- (3) The original principal balance.
- (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 business in creating and retaining its requisite number of employment opportunities.
- (9) Such other information and documentation as the secretary shall require.

(f) Penalty for noncompliance.--In the event that a loan recipient shall not comply with its approved application by failing to create or preserve the number of employment opportunities specified in its approved application, the secretary shall impose a penalty equal to an increase in the interest rate to 2% greater than the current prime interest rate for the remainder of the loan unless the penalty is waived by the secretary because the failure is due to circumstances outside the control of the loan recipient. The penalty shall be payable in installments that the secretary deems appropriate.

Section 3006. Powers of secretary.

The secretary shall have and may exercise all powers and authority necessary to the proper administration and implementation of this chapter and shall have the authority to adopt policies, procedures and guidelines and promulgate rules and regulations necessary to effectuate the provisions of this chapter.

Section 3007. Reporting and inspection.

(a) Inspection.--Each business enterprise which applies for or receives assistance under this chapter, upon reasonable request of the department, shall permit duly authorized employees of the department to inspect the plant, books and records of the business enterprise.

(b) Updating.--Each business enterprise shall update the information given to the department in its application if conditions change or to the extent that the information given originally becomes inaccurate or misleading.

(c) Periodic reports.--Each recipient of assistance under this chapter shall provide the department with periodic financial reports as the secretary may require until such time as the loan is paid off.

Section 3008. Nondiscrimination.

No loan shall be made to a business enterprise unless the business enterprise certifies to the department, in a form satisfactory to the department, that it shall not discriminate against any employee or any applicant for employment because of race, religion, color, national origin, sex or age. The business enterprise shall also certify to the department that it is not currently under citation for pollution violations and that in the future it will meet all applicable antipollution standards.

Section 3009. Conflict of interest.

No employee of the department shall, either directly or indirectly, be a party to or have any financial interest in any contract or agreement arising pursuant to this chapter.

Section 3010. Reports to the General Assembly.

(a) Annual reports.--On or before June 30 of each year, the secretary shall provide a report to the Chief Clerk of the House of Representatives and to the Secretary of the Senate. The report shall describe all relevant activities of the department pursuant to this chapter and shall include the following:

(1) List of business enterprises receiving loans from the fund and the amounts and terms of this assistance.

(2) Loan amounts repaid.

(3) Loans outstanding and balances due, including delinquent payments.

(4) Jobs created by businesses receiving funds in all previous years.

(5) Other relevant information as determined by the Secretary of Commerce.

(b) Availability of departmental reports.--Reports received by the department under section 3005(e) shall be made available upon request to members of the General Assembly.

Section 5. Section 5105 of the act is amended to read:

Section 5105. Power and authority of the Pennsylvania Economic Development Financing Authority.

In addition to the powers set forth in section 6.3 of the act of August 23, 1967 (P.L.251, No.102), known as the Economic Development Financing Law, the Pennsylvania Economic Development Financing Authority established under that act shall have the power and is hereby authorized to issue its limited obligation revenue bonds and other types of financing, as in the judgment of the financing authority shall be necessary, to provide sufficient funds for any activity the department or the Pennsylvania Industrial Development Authority is permitted to take with respect to the loan portfolios subject to their respective administrative authority [as set forth in section 1302]. Bonds authorized to be issued under this section shall not be a debt or liability of the Commonwealth and shall not create or constitute any indebtedness, liability or obligation of the Commonwealth except to the extent the bonds are secured by the pledge of loan portfolios. Bonds authorized to be issued under this section shall be payable solely from the revenues or funds pledged or available for their repayment.

Section 6. The following acts and parts of acts are repealed:

Act of December 20, 1985 (P.L.492, No.116), known as the Customized Job Training Act.

Act of October 21, 1988 (P.L.1050, No.120), known as the Machinery and Equipment Loan Fund Act.

Section 12(b) of the act of November 26, 1997 (P.L.504, No.54), known as the Self-Employment Assistance Program Act.

Section 7. The addition of Chapter 29 of the act shall be deemed a continuation of the program authorized by the former act of December 20, 1985 (P.L.492, No.116), known as the Customized Job Training Act, and the addition of Chapter 30 of the act shall be deemed a continuation of the act of October 21,

1988 (P.L.1050, No.120), known as the Machinery and Equipment Loan Fund Act. Except where in conflict with the provisions of this act, the regulations promulgated under the former acts shall remain in force and effect until they are amended or repealed in accordance with law.

Section 8. This act shall take effect immediately.

APPROVED--The 9th day of December, A. D. 2002.

MARK S. SCHWEIKER