
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1439 Session of
1984

INTRODUCED BY JUBELIRER, ZEMPRELLI, HELFRICK, LLOYD, SHAFFER,
SHUMAKER, SINGEL, STAPLETON, STOUT, STREET, WILLIAMS, WILT,
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LINCOLN, LOEPER, LYNCH, MELLOW, ANDREZESKI, BODACK, CORMAN,
FISHER, HANKINS, HESS AND HAGER, JUNE 15, 1984

AS REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 26, 1984

AN ACT

1 Establishing a loan program for capital development projects;
2 providing for the use of funds made available under the
3 Appalachian Regional Development Act of 1965 and the Public
4 Works and Economic Development Act of 1965; providing for
5 loans, loan guarantees and other programs for capital
6 development projects of small businesses; creating the
7 Capital Loan Fund; providing standards for and requirements
8 of the program; and making appropriations.

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

11 Section 1. Short title.

12 This act shall be known and may be cited as the Capital Loan
13 Fund Act.

14 Section 2. Definitions.

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

18 "Appalachian Regional Commission." The Appalachian Regional

1 Commission created and established by the Appalachian Regional
2 Development Act.

3 "Appalachian Regional Development Act." The Appalachian
4 Regional Development Act of 1965 (40 U.S.C. App. § 1 et seq.),
5 as amended.

6 "Area loan organization" or "organization." A local
7 development district of the Appalachian Regional Commission, an
8 industrial development corporation organized and existing under
9 the act of May 17, 1956 (1955 P.L.1609, No.537), known as the
10 Pennsylvania Industrial Development Authority Act, or any other
11 nonprofit economic development organization certified or
12 designated by the secretary as possessing an acceptable loan
13 review committee, professional staff support and such other
14 qualifications necessary to evaluate and administer loans made
15 under the provisions of this act.

16 "Capital development project" or "project." Land, buildings,
17 equipment and machinery and working capital which is acquired,
18 constructed, renovated or used by a small business enterprise as
19 part of a for-profit project or venture not of a mercantile or
20 services-related nature, except that small business enterprises
21 shall include international export-related services and
22 international export-related mercantile ventures or advanced
23 technology and computer-related services and mercantile ventures
24 which will increase Pennsylvania's national or international
25 market shares.

26 "Class I loans." Loans made under the provisions of this
27 act, utilizing funds made available to the department under the
28 Appalachian Regional Development Act of 1965 (40 U.S.C. § 302).

29 "Class II loans." Loans made under the provisions of this
30 act, utilizing funds made available to the department under the

1 Public Works and Economic Development Act of 1965 (42 U.S.C. §
2 3121 et seq.).

3 "Class III loans." All loans made under the provisions of
4 this act other than Class I or Class II loans.

5 "Department." The Department of Commerce.

6 "Fund." The Capital Loan Fund created and established by
7 this act.

8 "Public Works and Economic Development Act." The Public
9 Works and Economic Development Act of 1965 (42 U.S.C. § 3121 et
10 seq.), as amended.

11 "Secretary." The Secretary of Commerce.

12 "Small business enterprise." A for-profit corporation,
13 partnership or proprietorship which together with its parents,
14 affiliates and subsidiaries, employs, in the aggregate, less
15 than 50 full-time employees, including small business
16 enterprises located in small business incubator facilities.

17 "Working capital." Capital used by a small business
18 enterprise for operations, excluding fixed assets and production
19 machinery and equipment.

20 Section 3. Capital Loan Fund.

21 (a) Creation.--There is hereby created a special account in
22 the Treasury Department, to be known as the Capital Loan Fund to
23 which shall be credited all program appropriations made by the
24 General Assembly, Federal funds made available under the
25 Appalachian Regional Development Act of 1965, the Public Works
26 and Economic Development Act of 1965, or any other statute,
27 regulation or program, the designated proceeds from the bond
28 issue authorized by the act of _____, 1984 (P.L. _____,
29 No. _____), known as the Pennsylvania Economic Revitalization Act,
30 all proceeds from loan repayments and any and all other

1 deposits, payments and contributions from any other source made
2 available to the department for the purposes enumerated herein.

3 (b) Requisitions.--The department shall requisition from the
4 fund such amounts as may be necessary to provide adequate funds
5 for payments under this act. No more than 2% of the funds
6 appropriated to the fund in any fiscal year from the Economic
7 Revitalization Fund shall be used by area loan organizations for
8 administrative costs necessary for carrying out the provisions
9 of this act. Area loan organizations may establish and charge
10 reasonable fees for processing loans or loan guarantees under
11 this act, with the approval of the secretary. When and as the
12 amounts so allocated and appropriated by the department as loans
13 are repaid to the department pursuant to the terms of the bonds,
14 notes or other agreements made and entered into by the
15 department, the department shall pay such amounts into the fund,
16 it being the intent of this act that the fund shall operate as a
17 revolving fund whereby all appropriations, deposits,
18 contributions and payments and interest made thereto may be
19 applied and reapplied to the purposes of this act, including the
20 costs to the area loan organization as specified in this
21 subsection.

22 (c) Credits to fund.--All appropriations, deposits and
23 contributions made to the fund shall be immediately credited in
24 full to the fund and earnings on the moneys held in the fund
25 shall also be credited to the fund for the purposes of this act.

26 (d) Proceeds from repayments of loans.--Any other provisions
27 of this act notwithstanding, proceeds from repayments of loans
28 made with funds provided pursuant to the bond issue authorized
29 by the act of _____, 1984 (P.L. _____, No. _____), known as
30 the Pennsylvania Economic Revitalization Act, shall be deposited

1 into such accounts and disposed of as provided therein.

2 Section 4. Eligibility for loans; terms and conditions.

3 (a) Class I loans.--Eligibility requirements for Class I
4 loans shall be established by the secretary and shall conform in
5 all respects to those requirements imposed by the Appalachian
6 Regional Commission for use of Federal funds under the
7 Appalachian Regional Development Act.

8 (b) Class II loans.--Eligibility requirements for Class II
9 loans shall be established by the secretary and shall conform in
10 all respects to those requirements imposed by the Economic
11 Development Administration for use of Federal funds under the
12 Public Works and Economic Development Act of 1965.

13 (c) Class III loans.--

14 (1) The secretary may make advances from the fund,
15 subject to the terms, conditions and restrictions provided
16 under this act, to area loan organizations for the purpose of
17 making loans to small business enterprises for capital
18 development projects which demonstrate a substantial
19 likelihood of providing long term increases in net new
20 employment opportunities: Provided, however, That no loans
21 shall be made which would do any of the following:

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

26 (ii) Supplant funding that is otherwise available
27 expeditiously from private sector sources on commercially
28 reasonable terms.

29 (iii) Be for the purpose of refinancing any portion
30 of the total project cost or other existing loans or

1 debt.

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

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

8 (vi) Provide funds, directly or indirectly, for
9 payment, distribution, or as a loan to owners, partners
10 or shareholders of the small business enterprise, except
11 as ordinary compensation for services rendered.

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

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

16 (2) Loans may be made in an amount not exceeding 20% of
17 the total project cost, or \$50,000, whichever is less:
18 Provided, however, That no loans shall be made which will
19 exceed \$15,000 for each new employment opportunity created by
20 the project.

21 (3) All loans shall be secured by lien positions on
22 collateral at the highest level of priority which can
23 accommodate the borrower's ability to raise sufficient debt
24 and equity capital and be made for such period and shall bear
25 such interest as may be determined by the area loan
26 organization with the approval of the secretary: Provided,
27 however, That:

28 (i) The term of any loan shall not exceed five years
29 for machinery and equipment and working capital loans or
30 ten years for land and building loans.

1 (ii) The interest rate shall in no case be less than
2 5%.

3 (iii) The secretary may defer interest and principal
4 payments at his discretion.

5 (4) Funds appropriated from the Economic Revitalization
6 Fund for fiscal year 1984-1985 shall be allocated to area
7 loan organizations on the basis of the population of the
8 counties they serve.

9 (5) ~~No assistance using proceeds from the bond issue~~ <—
10 ~~authorized by the act of _____ 1984 (P.L.~~
11 ~~No. _____), known as the Pennsylvania Economic Revitalization~~
12 ~~Act,~~ NO CLASS III LOANS OR OTHER CLASS III AID may be <—
13 approved after June 30, 1987.

14 Section 5. Application and administration.

15 (a) Class I loans.--Application and administration
16 procedures for Class I loans shall be established by the
17 secretary and shall conform in all respects to those procedures
18 required or established by the Appalachian Regional Commission
19 for use of Federal funds under the Appalachian Regional
20 Development Act of 1965.

21 (b) Class II loans.--Application and administration
22 procedures for Class II loans shall be established by the
23 secretary and shall conform in all respects to those procedures
24 required or established by the Economic Development
25 Administration for use of Federal funds under the Public Works
26 and Economic Development Act of 1965.

27 (c) Class III loans.--

28 (1) The secretary may designate an area loan
29 organization to receive loan applications from small business
30 enterprises and administer loan portfolios in each area of

1 the Commonwealth. Applications shall be made to the area loan
2 organization in the form and manner as the secretary and the
3 organization may require.

4 (2) Upon receipt of the application, the area loan
5 organization shall investigate and review the application and
6 either approve or disapprove the loan application by proper
7 action of the governing body of the organization. The
8 decision action of the organization shall be based, in whole
9 or in part, upon the following criteria:

10 (i) Ability of applicant to meet and satisfy all
11 debt service as it becomes due and payable.

12 (ii) Sufficiency of available collateral, including
13 satisfactory lien positions on real and personal
14 property.

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

18 (iv) Number of net new employment opportunities
19 created by the proposed project.

20 (v) Eligibility of applicant as a small business
21 enterprise.

22 (vi) Capital needs of the small business enterprise.

23 (vii) Whether the small business enterprise will
24 enhance this Commonwealth's national and international
25 market shares.

26 (viii) Conformity or nonconformity of the project,
27 in all respects, to the provisions of this act.

28 (3) Upon approval of the loan application by the area
29 loan organization, the organization shall forward the
30 application and all supporting documentation which the

1 secretary shall require, including a copy of the proper
2 resolution of the governing body, to the secretary for review
3 and final approval or disapproval. The secretary shall review
4 each application and supporting documentation to ensure the
5 following:

6 (i) Eligibility of the business enterprise and the
7 project for which loan proceeds will be used.

8 (ii) Creation of a satisfactory number of new net
9 employment opportunities within the Commonwealth.

10 (iii) Compliance with the loan amount limitations
11 provided by this act.

12 (iv) Proper procedural action by the area loan
13 organization.

14 (v) Payment to date of all tax obligations due and
15 owing to the Commonwealth or any political subdivision
16 thereof.

17 (vi) Conformity of all aspects of the loan
18 transaction with the substantive and procedural
19 provisions of this act and regulations promulgated
20 hereunder.

21 All decisions of the secretary regarding the approval or
22 disapproval of loans under this act, including eligibility of
23 business enterprises and loan projects, shall be final.

24 (4) The secretary shall, to the extent practicable,
25 notify the area loan organization and the applicant business
26 enterprise of his or her final approval or disapproval of the
27 loan application, within 30 business days after the receipt
28 of the application. In the case of approval of a loan
29 application, the secretary shall arrange to draw the loan
30 amount from the Capital Loan Fund and advance the sum to the

1 area loan organization. The advance shall be a debt
2 obligation of the organization to the Commonwealth and shall
3 be evidenced by a note or bond issued by the organization in
4 an amount equal to the amount actually advanced and secured
5 in a manner as the secretary shall require. Upon receipt of
6 the advance, the area loan organization shall make the
7 advance available to the small business enterprise in the
8 form of a loan transaction, which loan shall be evidenced by
9 a note executed by the small business enterprise, secured in
10 a manner as the organization and the secretary shall require
11 and conform in all respects to the loan package as approved
12 by the organization and the secretary.

13 (5) All loans shall be administered and monitored by the
14 appropriate area loan organization in accordance with
15 policies and procedures prescribed by the secretary. Each
16 area loan organization shall submit reports to the department
17 as the secretary shall require, but in no case less than
18 twice a year. Said report shall show the following:

19 (i) Each outstanding loan.

20 (ii) The date approved.

21 (iii) The original principal amount.

22 (iv) The current principal balance.

23 (v) The interest rate.

24 (vi) The purpose for which the loan was made.

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

27 (viii) A statement regarding the progress of the
28 small business enterprise in creating its requisite
29 number of new long-term employment opportunities.

30 (ix) Such other information and documentation as the

1 secretary shall require.

2 (6) In the event that a small business enterprise shall
3 fail to comply with and create the number of new employment
4 opportunities specified in its approved application, the
5 secretary shall impose a penalty equal to an increase in the
6 interest to 2% greater than the current prime interest rate
7 for the remainder of the loan unless the penalty is waived by
8 the secretary because the failure is due to circumstances
9 outside of the control of the small business enterprise. The
10 penalty shall be payable in installments which the secretary
11 deems appropriate. Immediate notice of penalties and waivers
12 of penalties (with reasons therefor) shall be submitted by
13 the secretary to the Chief Clerk of the House of
14 Representatives and the Secretary of the Senate.

15 Section 6. Loan guarantees; other programs.

16 (a) Guarantees; endorsements and sureties.--The secretary
17 may make advances or provide other means of guaranteed payment
18 from the Capital Loan Fund to area loan organizations for the
19 purpose of guaranteeing, endorsing or acting as surety on the
20 bonds, notes, contracts, mortgages or other obligations of small
21 business enterprises on such terms and conditions, and according
22 to such policies and procedures as the secretary may prescribe.
23 Such guarantees, endorsements or sureties may be provided only
24 for those small business enterprises and in connection with
25 those capital development projects which conform in all respects
26 to the provisions of section 4(c). Further, area loan
27 organizations and the secretary shall, in reviewing applications
28 for guarantees, endorsements or sureties, base their respective
29 decisions regarding approval or disapproval upon the findings
30 and determinations required under section 5(c).

1 (b) Grants for loan reserve funds or reimbursing loan
2 losses.--The secretary may provide grants and other financial
3 assistance to area loan organizations for the purpose of
4 establishing loan reserve funds or reimbursing loan losses to
5 commercial banks and other financial institutions in order to
6 encourage the expansion and financing of small business
7 enterprises in the Commonwealth consistent with the purposes of
8 this act.

9 Section 7. Powers of the secretary; rules and regulations.

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

15 ~~Section 8. Standing for court action.~~

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16 ~~Any existing small business enterprise, located within five~~
17 ~~miles of the location of a capital development project assisting~~
18 ~~a proposed small business enterprise of a similar nature, shall~~
19 ~~have standing to bring suit against the secretary in~~
20 ~~Commonwealth Court and, upon showing that the proposed capital~~
21 ~~development project will cause irreparable harm to the existing~~
22 ~~small business enterprise and result in a net loss of job, shall~~
23 ~~be entitled to receive an injunction prohibiting the secretary~~
24 ~~from approving the loan or guarantee.~~

25 Section 9 8. Reporting and inspection.

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26 (a) Inspection.--Each small business enterprise which
27 applies for or receives assistance under this act, upon
28 reasonable request of the department or area loan organization,
29 shall permit duly authorized employees of the department and
30 area loan organization to inspect the plant, books and records

1 of the small business enterprise.

2 (b) Updating.--Each small business enterprise shall update
3 the information given to the department and area loan
4 organization in the application if conditions change or to the
5 extent that the information given originally becomes inaccurate
6 or misleading.

7 (c) Periodic reports.--Each recipient of assistance under
8 this act shall provide the department and the area loan
9 organization with such periodic financial reports as the
10 department or area loan organization may require until such time
11 as the loan is paid off.

12 Section ~~10~~ 9. Nondiscrimination.

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

22 Section ~~11~~ 10. Conflict of interest.

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23 No employee of the department and no officer or employee of
24 any area loan organization shall, either directly or indirectly,
25 be a party to or have any financial interest in any contract or
26 agreement arising pursuant to this act.

27 SECTION 11. GUIDELINES AND REGULATIONS.

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28 (A) GENERAL RULE.--THE SECRETARY SHALL ADOPT POLICIES,
29 PROCEDURES AND GUIDELINES AND PROMULGATE RULES AND REGULATIONS
30 NECESSARY TO CARRY OUT THIS ACT.

1 (B) ONE-YEAR EXEMPTION FROM REVIEW.--IN ORDER TO FACILITATE
2 THE SPEEDY IMPLEMENTATION OF THIS PROGRAM, THE DEPARTMENT SHALL
3 HAVE THE POWER AND AUTHORITY TO PROMULGATE, ADOPT AND USE
4 GUIDELINES WHICH SHALL BE PUBLISHED IN THE PENNSYLVANIA
5 BULLETIN. THE GUIDELINES SHALL NOT BE SUBJECT TO REVIEW PURSUANT
6 TO SECTION 205 OF THE ACT OF JULY 31, 1968 (P.L.769, NO.240),
7 REFERRED TO AS THE COMMONWEALTH DOCUMENTS LAW, SECTIONS 204(B)
8 AND 301(10) OF THE ACT OF OCTOBER 15, 1980 (P.L.950, NO.164),
9 KNOWN AS THE COMMONWEALTH ATTORNEYS ACT, OR THE ACT OF JUNE 25,
10 1982 (P.L.633, NO.181), KNOWN AS THE REGULATORY REVIEW ACT, AND,
11 EXCEPT AS PROVIDED IN SUBSECTION (D), SHALL BE EFFECTIVE FOR A
12 PERIOD NOT TO EXCEED ONE YEAR FROM THE EFFECTIVE DATE OF THIS
13 ACT.

14 (C) EXPIRATION OF EXEMPTION.--EXCEPT AS PROVIDED IN
15 SUBSECTION (D), AFTER THE EXPIRATION OF THE ONE-YEAR PERIOD ALL
16 GUIDELINES SHALL EXPIRE AND SHALL BE REPLACED BY REGULATIONS
17 WHICH SHALL HAVE BEEN PROMULGATED, ADOPTED AND PUBLISHED AS
18 PROVIDED BY LAW.

19 (D) EXCEPTION.--THE GENERAL ASSEMBLY MAY PROVIDE FOR AN
20 EXTENSION OF THE GUIDELINES ADOPTED PURSUANT TO SUBSECTION (B),
21 IF THE LEADERSHIP COMMITTEE CREATED PURSUANT TO SECTIONS 3 AND 4
22 OF THE ACT OF DECEMBER 22, 1981 (P.L.508, NO.142), KNOWN AS THE
23 SUNSET ACT, EXTENDS THE GUIDELINES ADOPTED PURSUANT TO
24 SUBSECTION (B).

25 Section 12. Reports to General Assembly.

26 (a) Annual reports.--On or before March 1 of each year, the
27 secretary shall provide a report to the Chief Clerk of the House
28 of Representatives and to the Secretary of the Senate. The
29 report shall describe all relevant activities of the department
30 pursuant to this act and shall include the following:

