

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1437 Session of 1984

INTRODUCED BY JUBELIRER, ZEMPRELLI, FISHER, LLOYD, SHAFFER, SHUMAKER, SINGEL, STAPLETON, STOUT, STREET, WILLIAMS, WILT, MOORE, MUSTO, O'CONNELL, O'PAKE, REIBMAN, RHOADES, ROCKS, ROMANELLI, ROSS, SCANLON, HOPPER, HOWARD, KRATZER, LEWIS, LINCOLN, LOEPER, LYNCH, MELLOW, ANDREZESKI, BODACK, CORMAN, HANKINS, HELFRICK, HESS AND HAGER, JUNE 15, 1984

AS AMENDED ON SECOND CONSIDERATION, JUNE 19, 1984

AN ACT

1 Creating a small business incubator program; providing for loans
2 and loan guarantees to small business incubators; specifying
3 the conditions of and requirements for grants and loans;
4 providing for seed grants; and making appropriations.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Small
9 Business Incubators Act.

10 Section 2. Definitions.

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

14 "Board." The board of the Ben Franklin Partnership Fund as
15 established by the act of December 6, 1982 (P.L.774, No.223),
16 entitled "An act amending the act of April 9, 1929 (P.L.177,
17 No.175), entitled 'An act providing for and reorganizing the

1 conduct of the executive and administrative work of the
2 Commonwealth by the Executive Department thereof and the
3 administrative departments, boards, commissions, and officers
4 thereof, including the boards of trustees of State Normal
5 Schools, or Teachers Colleges; abolishing, creating,
6 reorganizing or authorizing the reorganization of certain
7 administrative departments, boards, and commissions; defining
8 the powers and duties of the Governor and other executive and
9 administrative officers, and of the several administrative
10 departments, boards, commissions, and officers; fixing the
11 salaries of the Governor, Lieutenant Governor, and certain other
12 executive and administrative officers; providing for the
13 appointment of certain administrative officers, and of all
14 deputies and other assistants and employes in certain
15 departments, boards, and commissions; and prescribing the manner
16 in which the number and compensation of the deputies and all
17 other assistants and employes of certain departments, boards and
18 commissions shall be determined,' changing the name of the
19 Pennsylvania Science and Engineering Foundation and further
20 providing for membership on and duties of the board."

21 "Incubator." A facility in which small units of space may be
22 leased by a tenant and in which management maintains or provides
23 access to business development services for use by tenants.

24 "Local sponsor" or "sponsor." An organization which enters
25 into a written agreement with the board to establish, operate
26 and administer a small business incubator facility or to provide
27 funding to an organization which operates such a facility,
28 including municipalities, local development districts of the
29 Appalachian Regional Commission, industrial and commercial
30 development authorities established pursuant to the act of

1 August 23, 1967 (P.L.251, No.102), known as the Industrial and
2 Commercial Development Authority Law, redevelopment authorities
3 established pursuant to the act of May 24, 1945 (P.L.991,
4 No.385), known as the Urban Redevelopment Law, municipal
5 authorities organized pursuant to the act of May 2, 1945
6 (P.L.382, No.164), known as the Municipality Authorities Act of
7 1945, or any private nonprofit or for-profit organization
8 approved by the board.

9 "Seed capital fund." A special investment vehicle which
10 provides equity and other capital to small businesses during the
11 earliest stages of business growth, including businesses in
12 incubators.

13 "Tenant." A sole proprietorship, business partnership or
14 corporation operating a business for profit and leasing or
15 otherwise occupying space in an incubator.

16 Section 3. Creation of program.

17 There is hereby established under the direction of the board
18 a Statewide loan and loan guarantee program for the
19 establishment, operation and administration of small business
20 incubators, to be known as the Small Business Incubator Program.

21 Section 4. Incubator loans and loan guarantees.

22 (a) Application.--A local sponsor may submit an application
23 to the board to obtain a loan or loan guarantee to establish an
24 incubator. Each application shall:

25 (1) Demonstrate that a facility exists that can be
26 transformed into an incubator at a specified cost.

27 (2) Demonstrate the ability to DIRECTLY provide or <—
28 ~~access~~ ARRANGE FOR THE PROVISION OF business development <—
29 services for tenants of the incubator. These services shall
30 include, but not be limited to, financial consulting

1 assistance, management and marketing assistance and physical
2 services.

3 (3) Demonstrate a potential for sustained use of the
4 incubator facility by eligible tenants, through a market
5 study or other means.

6 (4) Demonstrate the ability to manage and operate the
7 incubator facility in accordance with section 5.

8 (5) Include other information as the board may require
9 through guidelines.

10 (b) Review of application.--The board shall review and
11 accept applications based on the following criteria:

12 (1) Ability of the local sponsor to carry out the
13 provisions of section 5.

14 (2) Economic impact of the incubator on the community.

15 (3) Conformance with areawide and local economic
16 development plans if such exist.

17 (4) Location of the incubator, in order to encourage
18 geographic distribution of incubators across the State.

19 (5) Such other criteria as may be established by the
20 board through guidelines.

21 (c) Loan conditions.--

22 (1) Loans awarded or guaranteed shall be used only for
23 the acquisition and leasing of land and existing buildings,
24 the rehabilitation of buildings or other facilities and the
25 purchase of equipment and furnishings, which are necessary
26 for the creation and operation of the incubator.

27 (2) Loans and loan guarantees may not exceed 50% of
28 total eligible project costs, or \$650,000, whichever is less.

29 (3) Funds loaned shall be secured by lien positions on
30 collateral at the highest level of priority which can

1 accommodate the borrower's ability to raise sufficient debt
2 and equity capital. When the obligation of a local sponsor is
3 guaranteed, the financial institution holding the obligation
4 shall be required to adequately secure the obligation.

5 (4) Loans and loan guarantees for an incubator in which
6 the facility is currently leased shall only be made if the
7 applicant intends to buy the facility. These loans shall be
8 secured by a leasehold mortgage.

9 (5) Payment of interest and principal on loans may be
10 deferred at the discretion of the board.

11 (6) Interest on all loans shall be no less than the
12 interest paid on the bonds ~~used to fund this act.~~ ISSUED ←
13 PURSUANT TO THE ACT OF (P.L. , NO.), KNOWN AS THE
14 PENNSYLVANIA ECONOMIC REVITALIZATION ACT.

15 (7) Funds may be lent for a maximum of ten years or the
16 useful life of the property, as established by the United
17 States Department of Treasury, whichever is greater.

18 Section 5. Responsibilities of local sponsors.

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

23 (1) Secure title on the facility or a lease with the
24 intent to secure title to the facility.

25 (2) Manage the physical development of the incubator
26 facility, including the provision of common conference or
27 meeting space.

28 (3) Furnish and equip the facility to provide business
29 services to the tenants.

30 (4) Market the facility and secure eligible tenants.

1 (5) Provide financial consulting, marketing and
2 management assistance services or arrange for the provision
3 of these services for tenants of the incubator, including
4 assistance in accessing private financial markets.

5 (6) Set rental and service fees.

6 (7) Encourage the sharing of ideas between tenants and
7 otherwise aid the tenants in an innovative manner while they
8 are within the incubator.

9 (8) Establish policies and criteria for the acceptance
10 of tenants into the incubator and for the termination of
11 occupancy of tenants so as to maximize the opportunity to
12 succeed for the greatest number of tenants, consistent with
13 the other criteria specified in this act. Retail enterprises,
14 not-for-profit enterprises, wholesale enterprises and
15 personal service enterprises are not permitted AS TENANTS in ←
16 incubators funded through this act.

17 (9) Establish a local advisory committee to assist in
18 the performance of these functions.

19 Section 6. Challenge grants for seed capital funds.

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

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

28 (1) Describe the purposes of the proposed seed capital
29 fund, including the types of businesses to receive
30 investments and the types of investments to be made,

1 consistent with subsection (c).

2 (2) Explain the need for the challenge grant in
3 attracting private investment to the proposed seed capital
4 fund.

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

9 (4) List private investment commitments obtained to
10 date.

11 (c) Use of funds.--The board may award challenge grants to
12 eligible applicants following receipt of an application
13 consistent with the criteria specified in this act. Recipients
14 of grants shall not expend any of the funds awarded unless and
15 until the board has ~~given approval for the expenditure, based on~~ ←
16 ~~evidence~~ ASSURED ITSELF that the following conditions hold: ←

17 (1) Either:

18 (i) at least \$3 of private investment has been
19 committed to the proposed seed capital fund for every \$1
20 of the challenge grant awarded and at least \$3,000,000 of
21 total investment, including the challenge grant, has been
22 committed to the proposed fund; or

23 (ii) at least \$1 of private investment has been
24 committed to the proposed seed capital fund for every \$1
25 of the challenge grant awarded; at least \$1.5 million of
26 total investment, including the challenge grant, has been
27 committed to the seed capital fund; and no investment is
28 to be made from the fund in a small business project
29 without an equal or greater investment from private
30 sources other than the fund in the same small business

1 project, such that, in total, at least \$3 of private
2 investment has been committed to an individual small
3 business project for every \$1 of challenge grant funds
4 invested.

5 (2) Investments from the seed capital fund will be made
6 exclusively in small businesses located in this Commonwealth,
7 including, but not limited to, tenants of incubators. For the
8 purposes of this section, small businesses shall not include
9 businesses of a mercantile or services related nature, but
10 shall include international export related services,
11 international export related mercantile ventures and advanced
12 technology or computer related ventures which will increase
13 the Commonwealth's share of domestic or international
14 markets.

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

18 (4) The grant recipient shall serve as a limited partner
19 or co-investor with limited liability in the proposed fund
20 and returns on investment of challenge grant funds shall be
21 reinvested in the seed capital fund.

22 In the event that recipients of funds cannot demonstrate these
23 conditions by June 30, 1986, the grants, or the portions thereof
24 for which the conditions are not satisfied, shall be rescinded
25 by the board and shall be available to the board to use for
26 loans AND LOAN GUARANTEES to incubators consistent with section <—
27 4.

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

29 The board shall:

30 (1) Adopt such rules, statements of policy, procedures,

1 forms and guidelines as may be necessary for the
2 implementation of this act.

3 (2) Make loans and loan guarantees to local sponsors for
4 incubators and award seed capital challenge grants.

5 (3) Ensure that local sponsors receiving loans or loan
6 guarantees and recipients of challenge grants meet the
7 conditions of this act.

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

13 (5) Receive and evaluate annual reports from recipients
14 of seed capital challenge grants. The reports shall include,
15 but not be limited to, the policies and procedures of the
16 seed capital fund, the amount of private investment in the
17 fund and the number, types and amounts of investment in small
18 firms by the fund.

19 Section 8. Indicators of program impact.

20 On or before March 1 of each year, the board shall provide a
21 report to both the Chief Clerk of the House of Representatives
22 and the Secretary of the Senate which shall include, but not be
23 limited to:

24 (1) The number of applications for incubators submitted
25 to the board.

26 (2) The number of applications for incubators approved
27 by the board.

28 (3) The number of incubators created through this
29 program.

30 (4) The number of tenants occupying each incubator.

1 (5) The number of jobs provided by each incubator and
2 tenants of each incubator.

3 (6) The occupancy rate of each incubator.

4 (7) The number of firms still operating in the
5 Commonwealth after leaving incubators and the number of jobs
6 they have provided. The board shall attempt to identify the
7 reasons why any companies have left the Commonwealth after
8 starting in an incubator.

9 (8) The number of seed capital funds established with
10 challenge grants, the amount of private investment in the
11 funds and the number, types and amounts of investments in
12 small firms by the funds.

13 SECTION 9. NONDISCRIMINATION. <—

14 NO LOAN OR LOAN GUARANTEE SHALL BE MADE TO A SMALL BUSINESS
15 ENTERPRISE UNLESS THE SMALL BUSINESS ENTERPRISE CERTIFIES TO THE
16 BOARD, IN A FORM SATISFACTORY TO THE BOARD, THAT IT SHALL NOT
17 DISCRIMINATE AGAINST ANY EMPLOYEE OR AGAINST ANY APPLICANT FOR
18 EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, NATIONAL ORIGIN,
19 SEX OR AGE.

20 Section 9 10. Appropriations. <—

21 (1) The sum of \$5,000,000, or as much thereof as may be
22 necessary, is hereby appropriated from the Pennsylvania
23 Economic Revitalization Fund for the fiscal year July 1, 1984
24 to June 30, 1985, for loans and LOAN guarantees to local <—
25 sponsors PURSUANT TO SECTION 4. <—

26 (2) The sum of \$3,000,000 is appropriated from the
27 Pennsylvania Economic Revitalization Fund for the fiscal year
28 beginning July 1, 1984, for the Seed Capital Challenge Grant
29 Program. These funds shall not lapse ~~at the end of the fiscal~~ <—
30 ~~year but shall be available for expenditure pursuant to~~

