

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,
MOORE, MUSTO, O'CONNELL, O'PAKE, REIBMAN, RHOADES, ROCKS,
ROMANELLI, ROSS, SCANLON, HOPPER, HOWARD, KRATZER, LEWIS,
LINCOLN, LOEPER, LYNCH, MELLOW, ANDREZESKI, BODACK, CORMAN,
FISHER, HANKINS, HESS AND HAGER, JUNE 15, 1984

AS AMENDED ON THIRD CONSIDERATION, JUNE 20, 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
19 Commission created and established by the Appalachian Regional

1 Development Act.

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

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

15 "Capital development project" or "project." Land, buildings,
16 equipment and machinery and working capital which is acquired,
17 constructed, renovated or used by a small business enterprise as
18 part of a for-profit project or venture not of a mercantile or
19 services-related nature ~~other than~~, EXCEPT THAT SMALL BUSINESS <—
20 ENTERPRISES SHALL INCLUDE international export-related services
21 ~~or~~ AND international export-related mercantile ventures or <—
22 advanced technology ~~or~~ AND computer-related services ~~or~~ AND <—
23 mercantile ventures which will increase Pennsylvania's national
24 or international market shares.

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

28 "Class II loans." Loans made under the provisions of this
29 act, utilizing funds made available to the department under the
30 Public Works and Economic Development Act of 1965 (42 U.S.C. §

1 3121 et seq.).

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

4 "Department." The Department of Commerce.

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

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

10 "Secretary." The Secretary of Commerce.

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

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

19 Section 3. Capital Loan Fund.

20 (a) Creation.--There is hereby created a special account in
21 the Treasury Department, to be known as the Capital Loan Fund to
22 which shall be credited all program appropriations made by the
23 General Assembly, Federal funds made available under the
24 Appalachian Regional Development Act of 1965, the Public Works
25 and Economic Development Act of 1965, or any other statute,
26 regulation or program, the designated proceeds from the bond
27 issue authorized by the act of ~~February 24, 1984 (P.L. 99,~~
28 ~~No. 19), entitled "An act authorizing the indebtedness, with the~~
29 ~~approval of the electors, of \$190,000,000 to promote economic~~
30 ~~redevelopment throughout Pennsylvania through job producing~~

<—

~~programs; grants and loans for industrial and small business
development; acquisition of equipment for vocational programs in
secondary schools, community colleges and engineering degree-
granting schools; agricultural development; and the acquisition,
rehabilitation or development of facilities for community
services and public recreation purposes," and approved by the
electors of the Commonwealth on April 10, 1984, all proceeds~~ <—

, 1984 (P.L. , NO.), KNOWN AS THE
PENNSYLVANIA ECONOMIC REVITALIZATION ACT, ALL PROCEEDS from loan
repayments and any and all other deposits, payments and
contributions from any other source made available to the
department for the purposes enumerated herein.

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

1 subsection.

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

6 (d) Proceeds from repayments of loans.--Any other provisions
7 of this act notwithstanding, proceeds from repayments of loans
8 made with funds provided pursuant to the bond issue authorized
9 by the act of ~~February 24, 1984 (P.L. 99, No. 19), and approved by~~ <—
10 ~~the electors of the Commonwealth on April 10, 1984,~~ <—
11 , 1984 (P.L. , NO.), KNOWN AS THE
12 PENNSYLVANIA ECONOMIC REVITALIZATION ACT, shall be deposited
13 into such accounts and disposed of as ~~shall be otherwise~~ <—
14 ~~provided by law~~ PROVIDED THEREIN. <—

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

16 (a) Class I loans.--Eligibility requirements for Class I
17 loans shall be established by the secretary and shall conform in
18 all respects to those requirements imposed by the Appalachian
19 Regional Commission for use of Federal funds under the
20 Appalachian Regional Development Act.

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

26 (c) Class III loans.--

27 (1) The secretary may make advances from the fund,
28 subject to the terms, conditions and restrictions provided
29 under this act, to area loan organizations for the purpose of
30 making loans to small business enterprises for capital

1 development projects which demonstrate a substantial
2 likelihood of providing long term increases in NET new <—
3 employment opportunities: Provided, however, That no loans
4 shall be made which would do any of the following:

5 (i) Cause, aid or assist in, directly or indirectly,
6 the relocation of any business operations from one part
7 of the Commonwealth to another, unless there is at least
8 a ~~10%~~ 25% increase in net employment. <—

9 (ii) Supplant funding that is otherwise available
10 expeditiously from private sector sources on commercially
11 reasonable terms.

12 (iii) Be for the purpose of refinancing any portion
13 of the total project cost or other existing loans or
14 debt.

15 (iv) Be for the purpose of financing projects
16 located outside the geographic boundaries of this
17 Commonwealth.

18 (v) Be for the purpose of paying off a creditor
19 which is inadequately secured and is in a position to
20 sustain a loss.

21 (vi) Provide funds, directly or indirectly, for
22 payment, distribution, or as a loan to owners, partners
23 or shareholders of the small business enterprise, except
24 as ordinary compensation for services rendered.

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

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

29 (2) Loans may be made in an amount not exceeding 20% of
30 the total project cost, or \$50,000, whichever is less:

1 Provided, however, That no loans shall be made which will
2 exceed \$15,000 for each new employment opportunity created by
3 the project.

4 (3) All loans shall be secured by lien positions on
5 collateral at the highest level of priority which can
6 accommodate the borrower's ability to raise sufficient debt
7 and equity capital and be made for such period and shall bear
8 such interest as may be determined by the area loan
9 organization with the approval of the secretary: Provided,
10 however, That:

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

14 (ii) The interest rate shall in no case be less than
15 5%.

16 (iii) The secretary may defer interest AND PRINCIPAL <—
17 payments at his discretion.

18 (4) Funds appropriated from the Economic Revitalization
19 Fund for fiscal year 1984-1985 shall be allocated to area
20 loan organizations on the basis of the population of the
21 counties they serve. In subsequent fiscal years, the <—
22 ~~secretary may weigh the allocation of funds appropriated from~~
23 ~~the Economic Revitalization Fund based on performance and~~
24 ~~other factors, including, but not limited to, the number of~~
25 ~~net new jobs for the Commonwealth created by loans made in~~
26 ~~previous years and the economic distress of the area served~~
27 ~~by the particular area loan organization.~~

28 (5) No Class III loans or other Class III aid may occur <—
29 ASSISTANCE USING PROCEEDS FROM THE BOND ISSUE AUTHORIZED BY <—
30 THE ACT OF 1984 (P.L. , NO.),

1 KNOWN AS THE PENNSYLVANIA ECONOMIC REVITALIZATION ACT, MAY BE
2 APPROVED after June 30, 1987.

3 Section 5. Application and administration.

4 (a) Class I loans.--Application and administration
5 procedures for Class I loans shall be established by the
6 secretary and shall conform in all respects to those procedures
7 required or established by the Appalachian Regional Commission
8 for use of Federal funds under the Appalachian Regional
9 Development Act of 1965.

10 (b) Class II loans.--Application and administration
11 procedures for Class II loans shall be established by the
12 secretary and shall conform in all respects to those procedures
13 required or established by the Economic Development
14 Administration for use of Federal funds under the Public Works
15 and Economic Development Act of 1965.

16 (c) Class III loans.--

17 (1) The secretary may designate an area loan
18 organization to receive loan applications from small business
19 enterprises and administer loan portfolios in each area of
20 the Commonwealth. Applications shall be made to the area loan
21 organization in the form and manner as the secretary and the
22 organization may require.

23 (2) Upon receipt of the application, the area loan
24 organization shall investigate and review the application and
25 either approve or disapprove the loan application by proper
26 action of the governing body of the organization. The
27 decision action of the organization shall be based, in whole
28 or in part, upon the following criteria:

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

1 (ii) Sufficiency of available collateral, including
2 satisfactory lien positions on real and personal
3 property.

4 (iii) Relevant criminal and credit history and
5 ratings of applicant as determined from outside credit
6 reporting services and other sources.

7 (iv) Number of net new employment opportunities
8 created by the proposed project.

9 (v) Eligibility of applicant as a small business
10 enterprise.

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

12 (vii) Whether the small business enterprise will
13 enhance this Commonwealth's national and international
14 market shares.

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

17 (3) Upon approval of the loan application by the area
18 loan organization, the organization shall forward the
19 application and all supporting documentation which the
20 secretary shall require, including a copy of the proper
21 resolution of the governing body, to the secretary for review
22 and final approval or disapproval. The secretary shall review
23 each application and supporting documentation to ensure the
24 following:

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

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

29 (iii) Compliance with the loan amount limitations
30 provided by this act.

1 (iv) Proper procedural action by the area loan
2 organization.

3 (v) Payment to date of all tax obligations due and
4 owing to the Commonwealth or any political subdivision
5 thereof.

6 (vi) Conformity of all aspects of the loan
7 transaction with the substantive and procedural
8 provisions of this act and regulations promulgated
9 hereunder.

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

13 (4) The secretary shall, to the extent practicable,
14 notify the area loan organization and the applicant business
15 enterprise of his or her final approval or disapproval of the
16 loan application, within 30 business days after the receipt
17 of the application. In the case of approval of a loan
18 application, the secretary shall arrange to draw the loan
19 amount from the Capital Loan Fund and advance the sum to the
20 area loan organization. The advance shall be a debt
21 obligation of the organization to the Commonwealth and shall
22 be evidenced by a note or bond issued by the organization in
23 an amount equal to the amount actually advanced and secured
24 in a manner as the secretary shall require. Upon receipt of
25 the advance, the area loan organization shall make the
26 advance available to the small business enterprise in the
27 form of a loan transaction, which loan shall be evidenced by
28 a note executed by the small business enterprise, secured in
29 a manner as the organization and the secretary shall require
30 and conform in all respects to the loan package as approved

1 by the organization and the secretary.

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

8 (i) Each outstanding loan.

9 (ii) The date approved.

10 (iii) The original principal amount.

11 (iv) The current principal balance.

12 (v) The interest rate.

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

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

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

19 (ix) Such other information and documentation as the
20 secretary shall require.

21 (6) In the event that a small business enterprise shall
22 fail to comply with and create the number of new employment
23 opportunities specified in its approved application, the
24 secretary shall impose a penalty equal to an increase in the
25 interest to 2% greater than the current prime interest rate
26 for the remainder of the loan unless the penalty is waived by
27 the secretary because the failure is due to circumstances
28 outside of the control of the small business enterprise. The
29 penalty shall be payable in installments which the secretary
30 deems appropriate. Immediate notice of penalties and waivers

of penalties (with reasons therefor) shall be submitted by the secretary to the Chief Clerk of the House of Representatives and the Secretary of the Senate.

Section 6. Loan guarantees; other programs.

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

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

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

The secretary shall have and may exercise all powers and authority necessary to the proper administration and

1 implementation of this act and shall have authority to adopt
2 policies, procedures and guidelines and promulgate rules and
3 regulations necessary to effectuate the provisions of this act.

4 Section 8. Reporting and inspection.

5 (a) Inspection.--Each small business enterprise which
6 applies for or receives assistance under this act, upon
7 reasonable request of the department or area loan organization,
8 shall permit duly authorized employees of the department and
9 area loan organization to inspect the plant, books and records
10 of the small business enterprise.

11 (b) Updating.--Each small business enterprise shall update
12 the information given to the department and area loan
13 organization in the application if conditions change or to the
14 extent that the information given originally becomes inaccurate
15 or misleading.

16 (c) Periodic reports.--Each recipient of assistance under
17 this act shall provide the department and the area loan
18 organization with such periodic financial reports as the
19 department or area loan organization may require until such time
20 as the loan is paid off.

21 Section 9. Nondiscrimination.

22 No loan or loan guarantee shall be made to a small business
23 enterprise unless the small business enterprise certifies to the
24 department, in a form satisfactory to the department, that it
25 shall not discriminate against any employee or against any
26 applicant for employment because of race, religion, color,
27 national origin, sex or age., ~~including, but not limited to, the~~ <—
28 ~~following: employment, upgrading, demotion or transfer;~~
29 ~~recruitment or recruitment advertising; layoff or termination;~~
30 ~~rates of pay or other forms of compensation; and selection for~~

1 ~~training, including apprenticeship.~~ The small business shall
2 also certify to the department that it is not currently under
3 citation for pollution violations and that in the future it will
4 meet all applicable antipollution standards.

5 Section 10. Conflict of interest.

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

10 Section 11. Reports to General Assembly.

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

16 (1) Types of businesses receiving aid and the amounts
17 and terms of the aid.

18 (2) Loans or other aid repaid.

19 (3) Loans or other aid outstanding and balances due,
20 including delinquent payments.

21 (4) Jobs created by businesses receiving aid in all
22 previous years.

23 (5) Increases in retail sales of the businesses
24 receiving aid.

25 (6) Estimated tax revenue increase due to aid from the
26 fund.

27 (b) Copies of policies, guidelines and rules.--The secretary
28 shall provide copies of all official policies, guidelines or
29 rules regarding the program to the Chief Clerk of the House of
30 Representatives and to the Secretary of the Senate. Reports

1 received by the department under section 5(c)(5) shall be made
2 available upon request to members of the General Assembly.

3 Section 12. Appropriations.

4 The sum of \$5,000,000 is hereby appropriated to the Capital
5 Loan Fund from the Economic Revitalization Fund, pursuant to the
6 restrictions established by section 3(e).

7 Section 13. Effective date.

8 This act shall take effect immediately.