

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1466 Session of
1986

INTRODUCED BY SHAFFER, SINGEL, SALVATORE, JUBELIRER, FISHER,
PETERSON, REIBMAN, PECORA, STOUT, HELFRICK, MOORE, CORMAN,
KRATZER, LEMMOND, WILT, RHOADES, O'PAKE, STAUFFER, ROSS,
SHUMAKER, MADIGAN, LOEPER, ZEMPRELLI, SCANLON, ROMANELLI,
LINCOLN, BRIGHTBILL, HANKINS, BODACK, MUSTO AND ANDREZESKI,
APRIL 10, 1986

AS AMENDED ON THIRD CONSIDERATION, JUNE 16, 1986

AN ACT

1 Amending the act of July 2, 1984 (P.L.545, No.109), entitled "An
2 act establishing a loan program for capital development
3 projects; providing for the use of funds made available under
4 the Appalachian Regional Development Act of 1965 and the
5 Public Works and Economic Development Act of 1965; providing
6 for loans, loan guarantees and other programs for capital
7 development projects of small businesses; creating the
8 Capital Loan Fund; providing standards for and requirements
9 of the program; and making appropriations," providing for
10 export assistance loans; and removing provisions relating to
11 guidelines.

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

14 Section 1. Section 2 of the act of July 2, 1984 (P.L.545,
15 No.109), known as the Capital Loan Fund Act, amended December
16 20, 1985 (P.L.364, No.104), is amended to read:

17 Section 2. Definitions.

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

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

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

7 "Apparel industry loans." Loans made under the provisions of
8 this act to manufacturers of apparel products.

9 "Apparel products." Products manufactured, woven, cut, sewn
10 or otherwise similarly processed by mechanical or human effort
11 from fabrics, leather or cloth made for use as clothing, shoes
12 or other attire.

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

23 "Board." The Apparel Industry Loan Board.

24 "Capital development project" or "project." Land, buildings,
25 equipment and machinery and working capital which is acquired,
26 constructed, renovated or used by a small business enterprise as
27 part of a for-profit project or venture not of a mercantile or
28 services-related nature, except that small business enterprises
29 shall include [international] export-related services and
30 international export-related mercantile ventures or advanced

<—

1 technology and computer-related services and mercantile ventures
2 which will increase Pennsylvania's national or international
3 market shares.

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

7 "Class II loans." Loans made under the provisions of this
8 act, utilizing funds made available to the department under the
9 Public Works and Economic Development Act of 1965 (42 U.S.C. §
10 3121 et seq.).

11 "Class III loans." All loans made under the provisions of
12 this act other than Class I, Class II [or], apparel industry
13 loans or export assistance loans.

14 "Department." The Department of Commerce.

15 "Export assistance loans." Loans made under the provisions
16 of this act to small business enterprises for the financing of
17 export development projects.

18 "Export Development Project." Land, buildings, machinery,
19 equipment or working capital for the manufacture of products to
20 be exported out of the United States by a small business
21 enterprise as part of a for-profit project or venture not of a
22 mercantile or services-related nature.

23 "Fund." The Capital Loan Fund created and established by
24 this act.

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

28 "Secretary." The Secretary of Commerce.

29 "Small business enterprise." A for-profit corporation,
30 partnership or proprietorship which is small enough to be aided

1 by assistance provided under this act, including small business
2 enterprises located in small business incubator facilities.

3 "Working capital." Capital used by a small business
4 enterprise for operations, excluding fixed assets and production
5 machinery and equipment.

6 SECTION 2. SECTIONS 3(D) AND 4(C)(5) OF THE ACT ARE
7 REPEALED. <—

8 Section ~~2~~ 3. Section 4 of the act is amended by adding a
9 subsection to read: <—

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

11 * * *

12 (e) Export assistance loans.--

13 (1) The secretary may make advances from the fund,
14 subject to terms, conditions and restrictions provided under
15 this act, to area loan organizations for the purpose of
16 making export assistance loans: Provided, however, That no
17 loans shall be made which would do any of the following:

18 (i) Cause, aid or assist in, directly or indirectly,
19 the relocation of any business operations from one part
20 of this Commonwealth to another, unless there is at least
21 a 15% increase in net employment.

22 (ii) Supplant funding that is otherwise available
23 expeditiously from private sector sources on commercially
24 reasonable terms.

25 (iii) Be for the purpose of refinancing any portion
26 of the total project cost or other existing loans or
27 debt.

28 (iv) Be for the purpose of financing projects
29 located outside the geographic boundaries of this
30 Commonwealth.

1 (v) Be for the purpose of paying off an existing
2 creditor.

3 (vi) Provide funds, directly or indirectly, for
4 payment, distribution, or as a loan to owners, partners
5 or shareholders of the small business enterprise, except
6 as ordinary compensation for services rendered.

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

9 ~~(viii) Provide funds to any small business~~ <—
10 ~~enterprise that has been involved in exporting for a~~
11 ~~period of more than two years.~~

12 (2) ASSISTANCE SHALL ONLY BE PROVIDED TO SMALL BUSINESS <—
13 ENTERPRISES WHICH ARE PENETRATING OR SIGNIFICANTLY INCREASING
14 THEIR PENETRATION OF EXPORT MARKETS.

15 ~~(2) (3) To be eligible for an export assistance loan, a~~ <—
16 ~~small business enterprise must provide the following:~~

17 (i) A signed contract for export.

18 (ii) Appropriate assurances of payment for exported
19 products to be provided by the contract.

20 (iii) Other information as required by the
21 secretary.

22 ~~(3) (4) All loans shall be secured by lien positions on~~ <—
23 ~~collateral at the highest level of priority which can~~
24 ~~accommodate the borrower's ability to raise sufficient debt~~
25 ~~and shall be made for such a period and bear such interest as~~
26 ~~may be determined by the area loan organization with the~~
27 ~~approval of the secretary. The secretary may defer interest~~
28 ~~and principal payments at his discretion.~~

29 ~~(4) (5) Loans may be made in an amount not exceeding 50%~~ <—
30 ~~of the total project cost, or \$200,000, whichever is less.~~

1 ~~(5)~~ (6) Export assistance loan recipients are not <—
2 disqualified from receiving Class I, II, III or apparel loans
3 because of eligibility to apply for an export assistance
4 loan: Provided, however, That the loans approved shall not
5 exceed in the aggregate 50% of the total project cost or
6 \$200,000, whichever is less.

7 Section 3 4. Section 5(c) of the act is amended to read: <—

8 Section 5. Application and administration.

9 * * *

10 (c) Class III and export assistance loans.--

11 (1) The secretary may designate an area loan
12 organization to receive loan applications from small business
13 enterprises and administer loan portfolios in each area of
14 the Commonwealth. Applications shall be made to the area loan
15 organization in the form and manner as the secretary and the
16 organization may require.

17 (2) Upon receipt of the application, the area loan
18 organization shall investigate and review the application and
19 either approve or disapprove the loan application by proper
20 action of the governing body of the organization. The
21 decision action of the organization shall be based, in whole
22 or in part, upon the following criteria:

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

25 (ii) Sufficiency of available collateral, including
26 satisfactory lien positions on real and personal
27 property.

28 (iii) Relevant criminal and credit history and
29 ratings of applicant as determined from outside credit
30 reporting services and other sources.

(iv) Number of net new employment opportunities created by the proposed project. This criterion shall not apply to export assistance loans.

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

(vi) Capital needs of the small business enterprise.

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

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

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

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

(ii) Creation of a satisfactory number of new net employment opportunities within the Commonwealth. This criterion shall not apply to export assistance loans.

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

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

(v) Payment to date of all tax obligations due and owing to the Commonwealth or any political subdivision

1 thereof.

2 (vi) Conformity of all aspects of the loan
3 transaction with the substantive and procedural
4 provisions of this act and regulations promulgated
5 hereunder.

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

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

28 (5) All loans shall be administered and monitored by the
29 appropriate area loan organization in accordance with
30 policies and procedures prescribed by the secretary. Each

1 area loan organization shall submit reports to the department
2 as the secretary shall require, but in no case less than
3 twice a year. Said report shall show the following:

4 (i) Each outstanding loan.

5 (ii) The date approved.

6 (iii) The original principal amount.

7 (iv) The current principal balance.

8 (v) The interest rate.

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

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

12 (viii) A statement regarding the progress of the
13 small business enterprise in creating its requisite
14 number of new long-term employment opportunities. This
15 item shall not apply to export assistance loans.

16 (ix) Such other information and documentation as the
17 secretary shall require.

18 (6) In the event that a small business enterprise shall
19 fail to comply with and create the number of new employment
20 opportunities specified in its approved application, the
21 secretary shall impose a penalty equal to an increase in the
22 interest to 2% greater than the current prime interest rate
23 for the remainder of the loan unless the penalty is waived by
24 the secretary because the failure is due to circumstances
25 outside of the control of the small business enterprise. This
26 penalty shall not apply to companies receiving only export
27 assistance loans. The penalty shall be payable in
28 installments which the secretary deems appropriate. Immediate
29 notice of penalties and waivers of penalties (with reasons
30 therefor) shall be submitted by the Secretary to the Chief of

1 the House of Representatives and the Secretary of the Senate.

2 * * *

3 Section 4 5. Sections 6 and 11 of the act, amended December <—
4 20, 1985 (P.L.364, No.104), are amended to read:

5 Section 6. Loan guarantees; other programs.

6 (a) Guarantees; endorsements and sureties.--The secretary
7 may make advances or provide other means of guaranteed payment
8 from the Capital Loan Fund to area loan organizations for the
9 purpose of guaranteeing, endorsing or acting as surety on the
10 bonds, notes, contracts, mortgages or other obligations of small
11 business enterprises on such terms and conditions and according
12 to such policies and procedures as the secretary may prescribe.
13 Such guarantees, endorsements or sureties may be provided only
14 for those small business enterprises and manufacturers of
15 apparel products and in connection with those capital
16 development projects which conform in all respects to the
17 provisions of section 4(c) or (d), or for export development
18 projects which conform in all respects to the provisions of
19 section 4(e). Further, area loan organizations and the secretary
20 shall, in reviewing applications for guarantees, endorsements or
21 sureties, base their respective decisions regarding approval or
22 disapproval upon the findings and determinations required under
23 section 5(c), except for applications for guarantees,
24 endorsements or sureties for export development projects which
25 shall be exempt from the requirements of section 5(c)(3)(ii).

26 (b) Grants for loan reserve funds or reimbursing loan
27 losses.--The secretary may provide grants and other financial
28 assistance to area loan organizations for the purpose of
29 establishing loan reserve funds or reimbursing loan losses to
30 commercial banks and other financial institutions in order to

1 encourage the expansion and financing of small business
2 enterprises and manufacturers of apparel products in the
3 Commonwealth consistent with the purposes of this act.

4 Section 11. Guidelines and regulations.

5 [(a) General rule.--] The secretary shall adopt policies,
6 procedures and guidelines and promulgate rules and regulations
7 necessary to carry out this act.

8 [(b) One-year exemption from review.--In order to facilitate
9 the speedy implementation of this program, the department shall
10 have the power and authority to promulgate, adopt and use
11 guidelines which shall be published in the Pennsylvania
12 Bulletin. The guidelines shall not be subject to review pursuant
13 to section 205 of the act of July 31, 1968 (P.L.769, No.240),
14 referred to as the Commonwealth Documents Law, sections 204(b)
15 and 301(10) of the act of October 15, 1980 (P.L.950, No.164),
16 known as the Commonwealth Attorneys Act, or the act of June 25,
17 1982 (P.L.633, No.181), known as the Regulatory Review Act, and,
18 except as provided in subsection (d), shall be effective for a
19 period not to exceed one year from the effective date of this
20 act. The department shall have the power and authority to
21 promulgate, adopt and use guidelines as provided herein to
22 implement the apparel industry loan program which guidelines
23 shall be effective for a period not to exceed one year unless
24 extended as provided in subsection (d).

25 (c) Expiration of exemption.--Except as provided in
26 subsection (d), after the expiration of the one-year period, all
27 guidelines shall expire and shall be replaced by regulations
28 which shall have been promulgated, adopted and published as
29 provided by law.

30 (d) Exception.--The General Assembly may provide for an

1 extension of the guidelines adopted pursuant to subsection (b),
2 if the Leadership Committee created pursuant to sections 3 and 4
3 of the act of December 22, 1981 (P.L.508, No.142), known as the
4 Sunset Act, extends the guidelines adopted pursuant to
5 subsection (b).]

6 SECTION 6. SECTION 13 OF THE ACT IS AMENDED TO READ: <—

7 SECTION 13. APPROPRIATIONS.

8 THE SUM OF \$5,000,000 IS HEREBY APPROPRIATED TO THE CAPITAL
9 LOAN FUND FROM THE ECONOMIC REVITALIZATION FUND[, PURSUANT TO
10 THE RESTRICTIONS ESTABLISHED BY SECTION 3(D)].

11 Section ~~5~~ 7. This act shall take effect immediately. <—