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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2359 Session of  
1993

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INTRODUCED BY SAURMAN, PLATTS, ARMSTRONG, RUBLEY, NICKOL, STEIL,  
LEE, LEH AND SCHEETZ, DECEMBER 14, 1993

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REFERRED TO COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT,  
DECEMBER 14, 1993

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AN ACT

1 Providing a loan program for small business in this  
2 Commonwealth; establishing a fund; providing for powers and  
3 duties of the Department of Commerce; and abolishing the  
4 legislative initiative program.

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

9 CHAPTER 1

10 SMALL BUSINESS LOAN FUND

11 Section 101. Short title.

12 This chapter shall be known and may be cited as the Small  
13 Business Loan Act.

14 Section 102. Definitions.

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

18 "Department." The Department of Commerce of the  
19 Commonwealth.

20 "Financial institutions." These include, but are not limited  
21 to, banks and other lending institutions whose regular course of  
22 business entails the making of commercial and industrial loans.

23 "Fund." The Small Business Loan Fund established in section  
24 106.

25 "Legislative Initiative Program." The program whereby funds  
26 are informally earmarked in the Commonwealth's budget for  
27 grants, commonly referred to as WAM grants, for community  
28 projects to be awarded at the discretion of the leadership of  
29 the General Assembly.

30 "Loan." A direct loan made by the Department of Commerce

1 under section 106.

2 "Small business." The business concerns that are defined in  
3 section 2(3) of the Small Business Act (Public Law 85-536, 15  
4 U.S.C. § 631 et seq.), and classified by the Small Business  
5 Administration under 13 CFR §§ 121.3-121.10 and which have fewer  
6 than 200 employees.

7 Section 103. Small Business Loan Fund.

8 There is hereby established a separate account in the State  
9 Treasury to be known as the Small Business Loan Fund. All funds  
10 to implement this chapter and all money received as repayment of  
11 loans and interest payments pursuant to this chapter shall be  
12 deposited into the fund.

13 Section 104. Small business loan program established.

14 There is hereby established a small business loan program  
15 which shall be administered by the department in accordance with  
16 the spirit and intent of this chapter.

17 Section 105. Eligibility.

18 Consideration for loans under this chapter shall be extended  
19 to all applicants who meet the following requirements:

20 (1) The applicant must be financially and legally  
21 responsible, based upon criminal history, credit history and  
22 business history.

23 (2) The applicant, and any affiliate shall have paid in  
24 full all taxes due and owing the Federal and State  
25 Government, and any other level of government or shall  
26 present evidence noting a satisfactory arrangement which has  
27 been agreed to by all parties to make the payment.

28 (3) The applicant may be a sole proprietorship,  
29 partnership or corporation. Where the enterprise is a  
30 proprietorship, the applicant must be otherwise eligible, and

1 must manage and control the enterprise. Where the applicant  
2 is a proprietorship, the applicant must be a resident of this  
3 Commonwealth or must certify that residency will be  
4 established on or before closing of the loan or loan  
5 guarantee. Where the enterprise is a partnership, at least  
6 51% of the partners must be residents of this Commonwealth or  
7 must certify that residency will be established on or before  
8 closing of the loan or loan guarantee. Where the enterprise  
9 is a corporation, its officers and at least 51% of the owners  
10 of the voting stock must be residents of this Commonwealth or  
11 must certify that residency will be established on or before  
12 closing of the loan or loan guarantee.

13 (4) The applicant shall commit to full-time management  
14 and control of the enterprise on a daily basis and shall  
15 commit to work full-time in the enterprise. If the applicant  
16 is otherwise employed, the applicant shall terminate such  
17 employment prior to or at the time of closing.

18 (5) The applicant, if he or she is a natural person,  
19 shall be 18 years of age or older.

20 (6) The applicant, if he or she has previously received  
21 loans from the fund, shall be current with respect to all  
22 amounts due under the loans.

23 (7) The applicant shall show, through experience,  
24 training or education, or a combination thereof, that he or  
25 she is capable of performing his or her responsibilities in  
26 connection with the ownership, management or control of the  
27 small business.

28 (8) The applicant and the small business shall not be  
29 involved as a debtor in any bankruptcy proceeding.

30 (9) The applicant is a small business authorized to do

1 business in this Commonwealth.

2 (10) The applicant has applied for but has not been able  
3 to obtain the desired loan from at least one financial  
4 institution and furnishes proof of the refusal, and the  
5 reasons for the refusal.

6 (11) The applicant furnishes information to show that he  
7 has or will have the ability to repay the loan out of income  
8 from the business. A preview of the business's first 36  
9 months of operation must accompany the application.

10 (12) Not more than 75% of the loan may be financed under  
11 this chapter. A financial institution must provide the  
12 remaining 25% of the loan.

13 (13) If the applicant is an existing firm, the applicant  
14 must furnish financial statements which shall show the  
15 applicable date of the information given, and shall be signed  
16 and certified by the proprietor, partner or corporation and a  
17 certified public accountant. The department shall require  
18 that the statements be audited and shall ask for financial  
19 statements for the past three years.

20 (14) If the applicant is a new small business concern, a  
21 signed detailed proposal of the applicant's planned business  
22 activities and how the loan funds will be spent. The proposal  
23 shall include projected budgets and projected financial  
24 statements for the first 36 months of business operations. An  
25 audit of the business by a certified public accountant must  
26 be made available every 12 months.

27 (15) The purpose of the loan must be in conformity with  
28 the provisions of this chapter.

29 (16) The applicant must agree that if the business is  
30 expanded, through subsidiaries or otherwise, the expansion

1 will be done within this Commonwealth if requested by the  
2 department.

3 Section 106. Direct loans; terms and restrictions.

4 (a) Direct loans.--The department may make direct loans to  
5 eligible small businesses for the financing of plant  
6 construction, conversion, expansion, the acquisition of land for  
7 expansion, the acquisition of equipment, machinery, inventory  
8 supplies, or materials, or for the supplying of working capital.  
9 At no time shall the loan be used for payment of existing debts  
10 of the applicant or the applicant's business.

11 (b) Loans may be in conjunction with other loans.--The  
12 direct loans may be made in conjunction with loans made by other  
13 financial institutions, including the Small Business  
14 Administration.

15 (c) Security interest to be provided.--The department shall,  
16 to the extent possible, obtain and perfect a security interest,  
17 in accordance with the provisions of 13 Pa.C.S. Div. 9 (relating  
18 to secured transactions; sales of accounts, contract rights and  
19 chattel paper), in the assets of the small business and, when  
20 reasonable, in the personal assets of the applicant, subject to  
21 the following conditions:

22 (1) The security interest shall be made secondary to all  
23 other necessary commercial loans obtained from financial  
24 institutions prior to or after the approval of the loan when  
25 the subordination is required in order to obtain the loans.

26 (2) The security interest shall not interfere with the  
27 efficient and effective operation of the business.

28 (3) The applicant should have assets of at least 25% of  
29 the loan and 75% of the loan should be secured by tangibles  
30 like land, building or equipment. The security interest may

1 be equity in a home or other real estate, chattel mortgages,  
2 personal guarantees or assignment of current receivables.

3 (d) Restrictions and limitations.--The loans shall be  
4 subject to the following restrictions and limitations:

5 (1) The applicant must meet all the requirements of  
6 section 105.

7 (2) The amount of the loan or loans to any one applicant  
8 at any one time shall not exceed a total of \$150,000 or 75%  
9 of the total investment needed.

10 (3) The loan term shall not exceed the greater of the  
11 useful life of the asset being financed or ten years for  
12 those funds used to purchase capital assets.

13 (4) The loan term shall not exceed five years if used  
14 for working capital.

15 (5) Each loan shall bear a simple interest rate for the  
16 full term of the loan. The interest rate shall be no more  
17 than the average interest rates charged by the financial  
18 institution to commercial borrowers for the same type of  
19 loan. The rate shall not exceed 15%.

20 (6) The commencement date for the repayment of the first  
21 installment on the principal of each loan may be deferred by  
22 the department for up to two years. Interest must be paid at  
23 once.

24 (7) The applicant must show a demonstrated need for the  
25 service, product or business in the area or region, which  
26 need may be determined by the small business center within  
27 the region.

28 (e) Prohibited use of loan funds.--Loan funds shall not be  
29 used for any of the following purposes:

30 (1) To pay off a creditor or creditors of the applicant

1     who are inadequately secured and are in a position to sustain  
2     a loss.

3         (2) To provide funds, directly or indirectly, for  
4     payment, distribution, or as a loan to owners, partners or  
5     shareholders of the applicant's business, except as ordinary  
6     compensation for services rendered.

7         (3) To refund a debt owed to a small business investment  
8     company.

9         (4) To replenish funds heretofore used for any of the  
10    purposes stated in paragraphs (1) thru (3).

11        (5) To effect a change in the ownership of the business,  
12    unless the ownership change will promote the sound  
13    development or preserve the existence of the business.

14        (6) To provide or free funds for the speculation in any  
15    kind of property, real or personal, tangible or intangible.

16        (7) Where the applicant is a charitable institution or  
17    other nonprofit enterprise.

18        (8) Where the loan is to provide funds to an applicant  
19    primarily engaged in the business of lending money.

20        (9) Where the purpose is to provide funds for financing  
21    investments not related or essential to the otherwise  
22    eligible small business.

23        (10) Where the purpose of the loan is to finance the  
24    acquisition, construction, improvement, or operation of real  
25    property which is, or is to be, held primarily for sale or  
26    investment.

27        (11) Where the effect of the granting of the loan would  
28    be to encourage a monopoly or would be inconsistent with the  
29    purposes and intent of this chapter.

30        (12) To establish, acquire or operate a bar, tavern or



any other enterprise that has as its primary function the dispensing of alcoholic beverages on a retail basis.

(13) To recover expenses incurred in preparing applications, financial statements and related documents required by the department.

(f) Disapproval of application.--An applicant whose application has been disapproved by the department may not, for a period of one year following the date of disapproval, submit another application, unless the department invites the applicant to submit another application.

#### Section 107. Reporting and inspection.

(a) Books and records to be supplied.--Each loan applicant or recipient shall provide, when requested, for inspection at the plant, books and records of the small business which has applied for or has been granted a loan.

(b) Information to be updated.--Each loan or guarantee applicant shall update the information given the department if the application should be changed or present conditions cause the information given to be inaccurate or misleading.

(c) Annual financial report to be filed.--Each loan recipient must provide the department with annual financial reports until such time as the loan is paid off.

#### Section 108. Rules and regulations.

In the performance of, and with respect to the purposes of this act, the department may prescribe reasonable rules and regulations to carry out the purposes of this chapter.

#### Section 109. Preferences and priorities.

In determining the preferences and priorities among eligible applicants the department shall consider, among other things:

(1) The financial condition of the applicants.

1           (2) The possible number of jobs to be created.

2           (3) The general economic condition of the area where the  
3       small business is or will be located.

4           (4) The amount of assets available to secure the loan.

5           (5) The extent to which the loan will carry out the  
6       purposes and intent of this chapter.

7       Section 110. Disapproval.

8       The department may disapprove a loan application for any of,  
9       but not limited to, the following reasons:

10           (1) The purpose of the loan is to accomplish an  
11       expansion or start a business which is unwarranted in light  
12       of the applicant's past experience and management ability.

13           (2) The effect of making the loan would be to subsidize  
14       inefficient management.

15           (3) The applicant cannot meet certain basic practical  
16       credit requirements established by the department.

17           (4) The applicant's character is questionable as  
18       determined and set forth in writing with the specific  
19       reasons, by the department.

20           (5) The applicant fails to meet other basic criteria  
21       deemed necessary by the department in justifying or granting  
22       a loan.

23       Section 111. Default.

24       The department shall make every effort to assist loan  
25       recipients. A committee that consists of five individuals  
26       appointed by the department shall be responsible for monitoring  
27       applicants who are delinquent 60 days or more. When the  
28       committee finds that the borrower is experiencing financial  
29       difficulties that cannot be reversed, the department shall move  
30       quickly to protect the interests of the department and minimize

1 the losses to it.

2 Section 112. Funding of program.

3 An amount equal to the sums expended for the Legislative  
4 Initiative Program during fiscal year 1992-1993 is hereby  
5 appropriated to the Department of Commerce to be used for the  
6 establishment, development and operation of the small business  
7 loan program.

8 CHAPTER 2

9 ABOLITION OF LEGISLATIVE INITIATIVE PROGRAM

10 Section 201. Short title.

11 This chapter shall be known and may be cited as the  
12 Legislative Initiative Program Abolition Act.

13 Section 202. Definitions.

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

17 "Legislative Initiative Program." The program whereby funds  
18 are informally earmarked in the Commonwealth's budget for  
19 grants, commonly referred to as WAM grants, for community  
20 projects to be awarded at the discretion of the leadership of  
21 the General Assembly.

22 "Legislative initiatives." Grants awarded under the  
23 Legislative Initiative Program.

24 Section 203. Unlawful practice.

25 The Legislative Initiative Program is hereby abolished and  
26 declared unlawful. The executive branch or any agency thereof  
27 shall not allow the legislative branch to exercise discretion  
28 over funds for legislative initiatives. No disbursements shall  
29 be made for legislative initiatives.

30 CHAPTER 3

1 EFFECTIVE DATE

2 Section 301. Effective date.

3 This act shall take effect in 60 days.