
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 10

Session of
1997

INTRODUCED BY ROBBINS, HART, MUSTO, SALVATORE, O'PAKE, HELFRICK,
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JANUARY 29, 1997

REFERRED TO COMMUNITY AND ECONOMIC DEVELOPMENT, JANUARY 29, 1997

AN ACT

1 Providing for a capital access program in the Department of
2 Community and Economic Development; providing for a loan
3 program for industrial, commercial and agricultural purposes;
4 prescribing powers and duties of the Department of Community
5 and Economic Development; establishing a Capital Reserve Fund
6 and Capital Access Fund; and making an appropriation.

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15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Short title.

18 This act shall be known and may be cited as the Capital
19 Access Program Act.

20 Section 2. Definitions.

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

24 "Affiliate." When describing a relationship with the lender,
25 shall refer to the same relationship as the relationship between
26 an affiliate and an institution as defined in section 102 of the
27 act of November 30, 1965 (P.L.847, No.356), known as the Banking
28 Code of 1965.

29 "Amount" or "proceeds." When used in connection with a loan
30 or loans, only the amount covered under the loan agreement.

1 "Borrower." The recipient of a loan which has been or will
2 be filed by the lender for enrollment under the Capital Access
3 Program created under section 3.

4 "Capital Access Fund." The fund created under section 23.

5 "Capital Reserve Fund" or "reserve fund." The fund created
6 under section 9.

7 "Department." The Department of Community and Economic
8 Development of the Commonwealth.

9 "Early loan." An enrolled loan if at the time of enrollment
10 the amount of previously enrolled loans made by the lender under
11 the program was less than \$6,000,000.

12 "Eligible loan" or "enrolled loan." A loan enrolled by the
13 Department of Community and Economic Development under the terms
14 of section 8.

15 "Lender." A financial institution that has entered into an
16 agreement with the Department of Community and Economic
17 Development to participate in the Capital Access Program.

18 "Passive real estate ownership." Ownership of real estate
19 for the purpose of deriving income from speculation, trade or
20 rentals, except that the term does not include:

21 (1) the ownership of that portion of real estate being
22 used or intended to be used for the operation of the business
23 of the owner of the real estate; or

24 (2) the ownership of real estate for the purpose of
25 construction or renovation.

26 "Program." The Capital Access Program created under section
27 3.

28 "Secretary." The Secretary of Community and Economic
29 Development of the Commonwealth.

30 Section 3. Capital Access Program.

1 There is hereby created a Capital Access Program in the
2 Department of Community and Economic Development. The purpose of
3 this program is to:

4 (1) Assist small businesses in meeting their financial
5 obligations and responsibilities by providing greater access
6 to capital through private lending institutions.

7 (2) Encourage investment and reinvestment by small
8 businesses in economic opportunities that will provide jobs,
9 stimulate economic growth and encourage more export trade.

10 (3) Encourage lending institutions to make lending
11 capital available to small businesses by minimizing the
12 potential risks associated with business loans.

13 Section 4. Powers of department.

14 The department shall have the power and duty to:

15 (1) Administer the program.

16 (2) Enter into contracts.

17 (3) Inspect, as the department may determine necessary,
18 the files of a lender relating to any loans enrolled under
19 the program during the normal business hours of the lender.

20 (4) Market the program to businesses and lending
21 institutions within this Commonwealth.

22 (5) Develop the program so that the degree of
23 flexibility for the department and the lending institutions
24 is maximized and the State oversight of the individual loans
25 is minimized.

26 (6) Promulgate regulations not inconsistent with this
27 act.

28 Section 5. Eligible loans.

29 An eligible loan includes all of the following:

30 (1) A loan made for industrial, commercial or

1 agricultural purposes.

2 (2) Refinancing of a loan made for one or more of the
3 purposes in paragraph (1), in accordance with section 8(e).

4 (3) A line of credit established between the lender and
5 borrower which is used for any of the purposes of paragraph
6 (1) or (2).

7 Section 6. Loan restrictions.

8 Eligible loans shall meet all of the following criteria:

9 (1) The lender has not made the loan in order to enroll
10 in the program prior debt which is not covered under the
11 program and which is or was owed by the borrower to the
12 lender.

13 (2) The proceeds of the loan will not be used for that
14 portion of a project or development devoted to housing.

15 (3) The proceeds of the loan will not be used to finance
16 passive real estate ownership.

17 (4) The proceeds of the loan will be used to finance
18 industrial, commercial or agricultural products, projects or
19 enterprises manufactured or located within this Commonwealth
20 or products manufactured in Pennsylvania to be sold in
21 international markets which will foster economic development
22 in this Commonwealth.

23 Section 7. Loan provisions.

24 An eligible loan agreement may provide for an interest rate,
25 fees and other terms and conditions as the borrower and lender
26 may agree. If the loan amount to be borrowed is determined by a
27 commitment agreement that establishes a line of credit, the
28 amount of the loan is the maximum amount available to the
29 borrower under the agreement.

30 Section 8. Enrollment of loans.

1 (a) Enrollment form.--To enroll a loan under this program,
2 the lender shall file a completed loan enrollment form with the
3 department. The lender shall certify all of the following to the
4 department as part of the filing:

5 (1) The borrower is a corporation, partnership, joint
6 venture, sole proprietorship, cooperative or other entity,
7 whether profit or nonprofit, which is authorized to do
8 business in this Commonwealth, and the proceeds of the loan
9 will be used for an endeavor related to industrial,
10 commercial or agricultural enterprises.

11 (2) The borrower is not an executive officer, director
12 or principal shareholder of the lender, or a member of the
13 immediate family of an executive officer, director or
14 principal shareholder of the lender, or a related interest of
15 any such executive officer, director, principal shareholder
16 or member of the immediate family. For purposes of this
17 paragraph, the terms "executive officer," "director,"
18 "principal shareholder," "immediate family" and "related
19 interest" shall refer to the same relationship to the lender,
20 whether or not the lender is a member bank, as the
21 relationship specified for those terms in connection with
22 member banks in 12 CFR Pt. 215 (relating to loans to
23 executive officers, directors, and principal shareholders of
24 member banks).

25 (3) The lender has received from the borrower a written
26 representation, warranty, pledge or waiver stating that the
27 borrower does not have a legal, beneficial or equitable
28 interest in the nonrefundable premium charges, determined in
29 accordance with section 10, or any other moneys credited to
30 the reserve fund established to cover losses sustained by the

1 lender on enrolled loans.

2 (4) The lender has complied with all Federal and State
3 laws, rules and regulations pertaining to the making of the
4 loan.

5 (5) Premium charges, determined in accordance with
6 section 10, required of the borrower and lender have been
7 deposited in the lender's capital reserve fund account.

8 (b) Filing schedule.--The lender shall file the loan
9 enrollment form not later than five business days after the
10 lender makes the loan. The date on which the lender makes a loan
11 is the date on which the lender first disburses proceeds of the
12 loan to the borrower or an earlier date on which the loan
13 documents have been executed and the lender has obligated itself
14 to disburse the proceeds of the loan. The filing date of a loan
15 enrollment form is the date on which the lender delivers the
16 required documentation to the department or mails it to the
17 department by certified mail.

18 (c) Department procedures.--When the department receives the
19 loan enrollment form, the department shall enroll the loan and
20 shall deliver to the lender within five business days of receipt
21 an acknowledgment of enrollment, signed by the secretary,
22 including documentation of the amount being transferred to the
23 lender's capital reserve fund account.

24 (d) Amount covered.--When filing a loan enrollment form, the
25 lender may specify an amount to be covered under the program.
26 The amount may be less than the total amount of the loan.

27 (e) Amount covered in refinancing.--

28 (1) In the case of a loan to refinance a loan previously
29 made to the borrower by the lender that was not enrolled
30 under the program, the lender may obtain coverage under the

1 program for an amount not exceeding the amount of additional
2 financing.

3 (2) If an enrolled loan is refinanced and the total
4 amount to be covered under the program does not exceed the
5 covered amount of the loan as previously enrolled, the
6 refinanced loan may continue as an enrolled loan without
7 payment of an additional premium charge or transfers by the
8 department to the lender's capital reserve fund account.

9 (3) If an enrolled loan is refinanced in an amount
10 exceeding the amount of the loan as previously enrolled, the
11 lender may obtain coverage of the amount of the refinanced
12 loan that exceeds the amount covered when the loan was
13 previously enrolled by refiling the loan for enrollment.

14 (4) Fluctuations in the outstanding balance of a line of
15 credit, without increasing the enrolled amount under the
16 program, are not a refinancing of the loan.

17 (f) Termination of enrollment.--If the outstanding balance
18 of an enrolled loan which is not a line of credit is reduced to
19 zero, the loan is no longer an enrolled loan. If an enrolled
20 loan which is a line of credit has an outstanding balance of
21 zero for a 12-month period, the line of credit is no longer an
22 enrolled loan, unless, before the expiration of the 12-month
23 period, the lender reaffirms in writing to the borrower that the
24 line of credit will remain open and the borrower acknowledges
25 the reaffirmation in writing.

26 Section 9. Capital Reserve Fund.

27 (a) Capital Reserve Fund.--There is hereby established a
28 special account in the State Treasury, to be known as the
29 Capital Reserve Fund, to which shall be credited all required
30 premium charges to be paid by lenders and borrowers and

1 transfers made by the department from the Capital Access Fund.

2 (b) Capital Reserve Fund accounts.--Within the Capital
3 Reserve Fund, an administrative capital reserve fund account
4 shall be established for each lender participating in the
5 program for the purpose of receiving all required premium
6 charges to be paid by the lender and the borrower on loans made
7 by that lender and transfers made by the department from the
8 Capital Access Fund. Earnings on the moneys held in a lender's
9 capital reserve fund account shall be credited to the lender's
10 account for the purposes of this act.

11 Section 10. Premium payments and transfers to Capital Reserve
12 Fund.

13 The premium charge payable to the lender's capital reserve
14 fund account by the lender and the borrower in connection with a
15 loan filed for enrollment shall be determined by the lender. The
16 premium paid by the borrower shall not be less than 1.5% nor
17 greater than 3.5% of the amount of the loan. The premium paid by
18 the lender shall be equal to the amount of the premium paid by
19 the borrower. The lender may recover from the borrower the cost
20 of the lender's premium payment, in any manner in which the
21 lender and borrower agree. When enrolling a loan, the department
22 shall transfer into the lender's capital reserve fund account
23 from the Capital Access Fund a premium amount determined as
24 follows:

25 (1) If the amount of any loan plus the amount of loans
26 previously enrolled by the lender is less than \$2,000,000,
27 the premium amount transferred must be equal to 150% of the
28 combined premiums paid into the lender's capital reserve fund
29 account by the borrower and the lender for each enrolled
30 loan.

1 (2) If, prior to the enrollment of the loan, the amount
2 of loans previously enrolled by the lender equal or exceeds
3 \$2,000,000, the premium amount transferred must be equal to
4 the combined premiums paid into the lender's capital reserve
5 fund account by the borrower and the lender for each enrolled
6 loan.

7 (3) If the amount of loans previously enrolled by the
8 lender is less than \$2,000,000, but the enrollment of a loan
9 will cause the aggregate amount of all enrolled loans made by
10 the lender to exceed \$2,000,000, the premium amount
11 transferred shall be equal to a percentage of the combined
12 amount paid by the lender and the borrower. The percentage
13 shall be determined by:

14 (i) multiplying by 150 that portion of the loan
15 which, when added to the amount of all previously
16 enrolled loans, totals \$2,000,000;

17 (ii) multiplying the balance of the loan by 100; and

18 (iii) adding the products of the two amounts and
19 dividing the sum by the total amount of the loan.

20 Section 11. Limitation of transfers.

21 (a) Maximum amount.--A maximum premium amount of \$150,000
22 may be transferred to the capital reserve fund account of each
23 lender participating in the program by the department over any
24 three-year period in connection with any one borrower or any
25 group of borrowers among which a common enterprise exists. The
26 maximum premium amount may be exceeded upon the written request
27 by a lender only if the department approved in writing the
28 transfer of an amount in excess of \$150,000.

29 (b) Definition.--As used in this section, the term "common
30 enterprise" has the meaning given it in 12 CFR Pt. 32 (relating

1 to lending limits).

2 Section 12. Pledge of Capital Reserve Fund.

3 The department shall pledge to the lender that the money in
4 its capital reserve fund account will be available to pay
5 claims, that the lender will have a first security interest in
6 the money in the capital reserve fund account to pay the claims
7 and that the department will not encumber or pledge the money to
8 any other party.

9 Section 13. Reports and records.

10 (a) Quarterly reports.--The department shall provide to the
11 lender quarterly transaction reports indicating the balance in
12 the reserve fund account, payments and transfers into the
13 reserve fund account, withdrawals from the reserve fund account
14 and interest or income earned on money credited to the reserve
15 fund account.

16 (b) Location of records.--The records of the department with
17 respect to all payments and transfers into the lender's reserve
18 fund account, withdrawals from the reserve fund account and
19 interest or income earned on the money credited to the reserve
20 fund account shall be available to the lender at the offices of
21 the department during normal business hours.

22 Section 14. Claims by lender to Capital Reserve Fund.

23 (a) Claim process.--If the lender charges off all or part of
24 an enrolled loan, the lender may file a claim with the
25 department.

26 (b) Elements of claim.--The lender's claim may include, in
27 addition to the amount of principal charged off plus accrued
28 interest, one-half of the documented out-of-pocket expenses
29 incurred in pursuing its collection efforts, including
30 preservation of collateral. The amount of principal and accrued

1 interest included in the claim may not exceed the principal
2 amount covered under the program upon enrollment, plus accrued
3 interest attributable to the covered principal amount.

4 (c) Charge-off determination.--The lender shall determine
5 when and how much to charge off on an enrolled loan in a manner
6 consistent with its normal method for making these
7 determinations on similar loans which are not enrolled loans.

8 (d) Multiple claims.--If the lender files two or more claims
9 contemporaneously and there are insufficient funds in its
10 capital reserve fund account at that time to cover the entire
11 amount of the claims, the lender may designate the order of
12 priority in which the department shall pay the claims.

13 Section 15. Disbursement of Capital Reserve Fund.

14 (a) Procedure.--Upon receipt by the department of a claim
15 filed by the lender, the department shall, within 20 business
16 days, pay from the lender's capital reserve fund account the
17 amount of the claim as submitted, unless the information
18 provided by the lender was known by the lender to be false at
19 the time the loan was filed for enrollment.

20 (b) Insufficient reserves.--If there is insufficient money
21 in the lender's capital reserve fund account to cover the entire
22 amount of the lender's claim, the department shall pay to the
23 lender an amount equal to the current balance in the capital
24 reserve fund account, and the following shall apply:

25 (1) If the enrolled loan for which the claim has been
26 filed is not an early loan, the payment fully satisfies the
27 claim and the lender has no right to receive any additional
28 amount from its capital reserve fund account with respect to
29 that claim.

30 (2) If the loan is an early loan, the partial payment

1 does not satisfy the lender's claim, and, at any time that
2 the remaining balance of the claim is not greater than 75% of
3 the balance in the lender's capital reserve fund account at
4 the time of the loss, the department, upon request of the
5 lender, shall pay the remaining balance of the claim.

6 Section 16. Recovery by lender subsequent to claim.

7 (a) Payment to department.--If, subsequent to payment of a
8 claim by the department, the lender recovers from a borrower any
9 amount for which payment of the claim was made, the lender shall
10 promptly pay to the department for deposit in its capital
11 reserve fund account the amount recovered, less one-half of any
12 documented out-of-pocket expenses incurred. The lender shall
13 have first priority to fully recover its loss on an enrolled
14 loan. Any amount in excess of the amount of full recovery shall
15 be paid to the department by the lender for deposit in the
16 lender's capital reserve fund account.

17 (b) Computing loss.--For the purposes of this section, the
18 lender's loss on an enrolled loan includes any losses on the
19 loan including principal, accrued interest and one-half of the
20 documented out-of-pocket expenses attributable to principal
21 amounts in excess of that amount covered under the program or
22 the principal amount included in the claim.

23 Section 17. Technical assistance.

24 When a borrower becomes 60 days delinquent in the payments of
25 an enrolled loan or before a lender files a claim with the
26 department, the lender shall notify the department of the
27 delinquency. The department, after notification, shall inform
28 the borrower of the technical assistance providers in the
29 borrower's area that may assist in solving any business or
30 management problems experienced by the borrower.

1 Section 18. Subrogation of claims.

2 The department may exercise the right of subrogation under
3 this section if the department determines, in the department's
4 discretion, that the lender has not exercised reasonable care
5 and diligence in its collection activities with respect to the
6 loan or that there is a reasonable basis for believing that the
7 lender will not exercise reasonable care and diligence in the
8 future with respect to the collection activities.

9 Section 19. Assignment of rights.

10 If the payment of a claim has fully covered the lender's loss
11 on an enrolled loan or if the payment of a claim when combined
12 with any recovery from the borrower has fully covered the
13 lender's loss, the department upon request, is subrogated to the
14 rights of the lender with respect to any collateral, security or
15 other right of recovery in connection with the loan that has not
16 been realized by the lender. The lender thereafter shall assign
17 to the department any right or interest in any collateral,
18 security or other right of recovery in connection with the loan.

19 Section 20. Recovered funds.

20 Any money received by the department as a result of
21 enforcement actions taken with respect to any security or other
22 rights of recovery must be promptly deposited by the department
23 in the lender's capital reserve fund account, less any out-of-
24 pocket expenses incurred by the department in taking the
25 enforcement actions.

26 Section 21. Excess capital reserve funds.

27 (a) Reports.--The lender shall file quarterly reports with
28 the department indicating the number and aggregate outstanding
29 balance of all enrolled loans as of the end of each quarter. A
30 quarterly report is not required for any quarter that ends with

1 a balance in the lender's capital reserve fund account of zero,
2 except that a calendar year end report must be filed. In
3 computing the aggregate outstanding balance of all enrolled
4 loans, the balance of any loan may not be greater than the
5 covered amount of the loan as enrolled.

6 (b) Withdrawal of excess reserve funds.--If reports filed
7 under this section indicate that for the immediately preceding
8 24-month period the balance in the lender's capital reserve fund
9 account continually exceeded the aggregate outstanding balance
10 of all enrolled loans, the department may withdraw from the
11 lender's capital reserve fund account, on or before the last day
12 of the month for which a report is due, an amount not greater
13 than the amount by which the lender's capital reserve fund
14 account balance exceeded the aggregate outstanding balance of
15 all enrolled loans as of the most recent report, unless the
16 lender has provided to the department adequate documentation
17 that, at some time during the 24-month period, the aggregate
18 outstanding balance of all enrolled loans exceeded the balance
19 then in its reserve fund account. Any amounts withdrawn under
20 this section from the lender's capital reserve fund account
21 shall be transferred to the reserve fund.

22 (c) Report not filed.--If a report required under this
23 section is not filed within 30 days of its original due date,
24 the department may withdraw from the lender's capital reserve
25 fund account based on the department's determination from an
26 inspection of the lender's files an amount not greater than the
27 amount by which the lender's capital reserve fund account
28 balance exceeded the aggregate outstanding balance of all
29 enrolled loans as of the date for which the report was required
30 to be filed.

1 Section 22. Termination.

2 The department may terminate the obligation to a lender to
3 enroll loans under the program if the department determines that
4 the lender is not in substantial compliance with the
5 requirements of the program. The termination takes effect on the
6 date specified in the notice of termination, except that the
7 termination does not apply to any loan made on or before the
8 date on which the notice of termination is received by the
9 lender. If the department is terminating the enrollment of loans
10 for all participating lenders under the program, the department
11 shall provide notice of at least 90 days to the lender. Any
12 terminations under this section are prospective only and do not
13 apply to any loans previously financed. After termination, the
14 amount covered under the program may not be increased beyond the
15 covered amount as previously enrolled.

16 Section 23. Capital Access Fund.

17 There is hereby established a special account in the State
18 Treasury, to be known as the Capital Access Fund, to which shall
19 be credited all program appropriations by the General Assembly.
20 The department shall requisition from the fund the amounts as
21 may be necessary to provide adequate funds to the Capital
22 Reserve Fund. Earnings on the moneys held in the fund shall also
23 be credited to the fund for the purposes set forth in this act.

24 Section 24. Appropriation.

25 The sum of \$6,000,000, or as much thereof as may be
26 necessary, is hereby appropriated to the Department of Community
27 and Economic Development for the fiscal year July 1, 1997, to
28 June 30, 1998, to carry out the provisions of this act.

29 Section 25. Effective date.

30 This act shall take effect July 1, 1997, or immediately,

1 whichever is later.