

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1323 Session of
2011

INTRODUCED BY YAW, VOGEL, GORDNER, BRUBAKER, SCHWANK, FONTANA,
ALLOWAY, RAFFERTY, ARGALL, SOLOBAY, WAUGH, BREWSTER, MENSCH
AND PILEGGI, OCTOBER 31, 2011

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, NOVEMBER
14, 2011

AN ACT

1 Amending Titles 3 (Agriculture) and 64 (Public Authorities and
2 Quasi-Public Corporations) of the Pennsylvania Consolidated
3 Statutes, providing for the Agriculture Disaster Recovery
4 Program; ~~and~~ further providing for First Industries Program; ←
5 AND MAKING AN APPROPRIATION.

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

8 Section 1. Title 3 of the Pennsylvania Consolidated Statutes
9 is amended by adding a chapter to read:

10 CHAPTER 48

11 AGRICULTURE DISASTER RECOVERY PROGRAM

12 Sec.

13 4801. Short title of chapter.

14 4802. Purpose of chapter.

15 4803. Definitions.

16 4804. Powers and duties of department.

17 4805. Restricted account.

18 4806. Agriculture Disaster Recovery Program.

1 ~~4807. Loan guarantees and interest payments.~~ ←
2 4807. INTEREST RATE ASSISTANCE. ←
3 \$ 4801. Short title of chapter.
4 This chapter shall be known and may be cited as the
5 Agriculture Disaster Recovery Program Act.
6 \$ 4802. Purpose of chapter.
7 The purpose of this chapter is to establish a program within
8 the Department of Agriculture to provide financial assistance to ←
9 production agriculture. FARMERS, WHO HAVE BEEN IMPACTED BY A ←
10 DISASTER AND HAVE EXPERIENCED AN ELIGIBLE LOSS, WITH INTEREST
11 RATE ASSISTANCE FOR LOANS OR LINES OF CREDIT ISSUED TO AID IN
12 THEIR RECOVERY.
13 \$ 4803. 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 "Adjusted loss." The difference between:
18 (1) eligible loss; and
19 (2) covered loss.
20 "Authority." The Commonwealth Financing Authority ←
21 established in 64 Pa.C.S. § 1511 (relating to authority).
22 "Board." The board of the Commonwealth Financing Authority
23 under 64 Pa.C.S. § 1512 (relating to board).
24 "COMMERCIAL LENDING INSTITUTION." A FEDERALLY CHARTERED OR ←
25 STATE-CHARTERED BANK, SAVINGS BANK, SAVINGS OR LOAN ASSOCIATION
26 THAT:
27 (1) HAS A SATISFACTORY RATING FROM ITS PRIMARY
28 REGULATOR.
29 (2) IS ENGAGED IN COMMERCIAL LENDING ACTIVITIES.
30 (3) OPERATES AT LEAST ONE FULL-SERVICE BRANCH FOR

1 DEPOSIT GATHERING AND LENDING LOCATED WITHIN THIS

2 COMMONWEALTH.

3 "COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION." A COMMUNITY
4 DEVELOPMENT FINANCIAL INSTITUTION CERTIFIED IN ACCORDANCE WITH
5 THE FEDERAL COMMUNITY DEVELOPMENT BANKING AND FINANCIAL
6 INSTITUTIONS ACT OF 1994 (PUBLIC LAW 103-325, 108 STAT. 2163).

7 "Covered loss." Any amount received by or due the recipient
8 from Federal insurance, grants and loans and private insurance
9 on account of an eligible loss. The term does not include an
10 insurance deductible paid by the recipient.

11 "Department." The Department of Agriculture of the
12 Commonwealth.

13 "Eligible loss." Damage to ~~production agriculture~~ NORMAL
14 AGRICULTURAL OPERATION caused by a disaster which results in a
15 county being declared a disaster area by any of the following:

16 (1) A presidential declaration for certain counties or
17 the State as a whole.

18 (2) A United States Department of Agriculture
19 secretarial declaration for certain counties or the State as
20 a whole.

21 (3) A gubernatorial declaration for certain counties or
22 the State as a whole.

23 The term does not include damaged or destroyed farm structures
24 or equipment.

25 ~~"Farmer." A person engaged in the business of production~~
26 ~~agriculture.~~

27 "FARMER." THE OPERATOR OF A NORMAL AGRICULTURAL OPERATION.

28 "Floodway." The channel of a watercourse and portions of the
29 adjoining floodplains which are reasonably required to carry and
30 discharge the 100-year frequency flood. In an area where the

1 100-year frequency floodway is not delineated by the Federal
2 Emergency Management Agency, the floodway is assumed to extend
3 to 50 feet from the top of the stream bank.

4 "Floodway restoration." The removal of obstructions,
5 consisting of man-made or natural materials such as building
6 materials, household materials, fuel tanks, hazardous materials
7 and containers, trees, vegetation, rock, gravel, sand or other
8 natural materials, deposited within a floodway or stream channel
9 by a natural flooding event, in order to stabilize and restore
10 the integrity of the floodway, stream channel and stream bank,
11 and to prevent any further long-term erosion or deterioration of
12 the floodway, stream channel or stream bank, and minimize any
13 further obstruction of water flow in the floodway or stream
14 channel.

15 "Land restoration." Debris removal, regrading of land and
16 preservation of soil against deterioration or erosion.

17 ~~"Production agriculture." The management and use of farming~~ ←
18 ~~resources for any of the following:~~

19 ~~(1) The production of:~~

20 ~~(i) agricultural, horticultural, aquacultural,~~
21 ~~vegetable, fruit or floricultural products of the soil;~~

22 ~~(ii) livestock or livestock products;~~

23 ~~(iii) milk or dairy products; or~~

24 ~~(iv) poultry or poultry products.~~

25 ~~(2) Any other practices approved by the Department of~~
26 ~~Agriculture.~~

27 "NORMAL AGRICULTURAL OPERATION." AS DEFINED UNDER SECTION 2 ←
28 OF THE ACT OF JUNE 10, 1982 (P.L.454, NO.133), REFERRED TO AS
29 THE RIGHT-TO-FARM LAW.

30 "Program." The Agriculture Disaster Recovery Program

established under section 4806 (relating to Agriculture Disaster Recovery Program).

~~"Working capital." Funds used for the disposal of contaminated material and the acquisition of fertilizer, seed, livestock feed and other supplies for the purpose of production agriculture.~~

"WORKING CAPITAL." FUNDS USED TO SUPPORT A NORMAL AGRICULTURAL OPERATION, EXCLUDING FIXED ASSETS AND PRODUCTION MACHINERY AND EQUIPMENT.

§ 4804. Powers and duties of department.

The department shall adopt regulations to administer the program.

§ 4805. Restricted account.

When funds are made available, a restricted revolving account shall be established in the State Treasury to be known as the Agriculture Disaster Recovery Account. The account shall be for the purpose of ~~making interest payments~~ PROVIDING INTEREST RATE ASSISTANCE to eligible farmers for assistance under the program established in section 4806 (relating to Agriculture Disaster Recovery Program). Any funds appropriated to or transferred to fund the program and moneys otherwise made available to the program shall be deposited in the account and made available for additional agriculture disaster recovery interest ~~payments~~ RATE ASSISTANCE for the purposes of the program.

§ 4806. Agriculture Disaster Recovery Program.

(a) Establishment.--There is established within the department the Agriculture Disaster Recovery Program. The program shall provide ~~financial~~ INTEREST RATE assistance for a farmer, as defined in section 4803 (relating to definitions), located within this Commonwealth, who is eligible for disaster

1 recovery assistance.

2 ~~(b) Eligibility. To be eligible for disaster assistance, an~~ ←
3 ~~applicant must certify to the department that the applicant~~
4 ~~meets all of the following:~~

5 ~~(1) Be located in a county that has been declared a~~
6 ~~disaster area by any of the following:~~

7 ~~(i) A presidential declaration for certain counties~~
8 ~~or the State as a whole.~~

9 ~~(ii) A United States Department of Agriculture~~
10 ~~secretarial declaration for certain counties or the State~~
11 ~~as a whole.~~

12 ~~(iii) A gubernatorial declaration for certain~~
13 ~~counties or the State as a whole.~~

14 ~~(2) Suffer an eligible loss.~~

15 ~~(3) Meet the definition of farmer in section 4803.~~

16 ~~(4) Be currently engaged in production agriculture and~~
17 ~~intend to continue in production agriculture.~~

18 ~~(5) Not be delinquent on any State or local taxes.~~

19 ~~(c) Procedure.~~

20 ~~(1) An applicant shall apply for assistance under~~

21 (B) ELIGIBILITY.--TO BE ELIGIBLE FOR INTEREST RATE ←
22 ASSISTANCE, A FARMER MUST CERTIFY TO THE DEPARTMENT THAT THE
23 FARMER MEETS ALL OF THE FOLLOWING:

24 (1) SUFFER AN ELIGIBLE LOSS.

25 (2) INTEND TO CONTINUE IN NORMAL AGRICULTURAL OPERATION.

26 (3) NOT BE DELINQUENT ON ANY STATE OR LOCAL TAXES.

27 (4) BE APPROVED FOR A WORKING CAPITAL LOAN OR LINE OF
28 CREDIT, FOR ELIGIBLE LOSSES, FROM A COMMERCIAL LENDING
29 INSTITUTION OR COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.

30 (C) PROCEDURE.--

1 (1) A FARMER MUST APPLY FOR INTEREST RATE ASSISTANCE
2 UNDER this section on a form furnished by the department
3 which sets forth the facts establishing eligibility. An
4 application under this subsection is subject to 18 Pa.C.S. §
5 4904 (relating to unsworn falsification to authorities).

6 ~~(2) An applicant shall have 180 days from the date of~~ ←
7 ~~declaration of disaster to submit an application to the~~
8 ~~department.~~

9 (2) A FARMER MUST SUBMIT AN APPLICATION TO THE ←
10 DEPARTMENT WITHIN 180 DAYS FROM THE DATE OF DECLARATION OF
11 DISASTER.

12 (3) The department shall review the application to
13 determine eligibility.

14 (4) Within 30 days of receipt of the application, the
15 department shall make an eligibility determination and an
16 INTEREST RATE assistance determination. ←

17 (5) WITHIN 60 DAYS OF RECEIPT OF THE DEPARTMENT'S ←
18 APPROVAL FOR INTEREST RATE ASSISTANCE, RECEIVE CONFIRMATION
19 FROM THE COMMERCIAL LENDING INSTITUTION OR COMMUNITY
20 DEVELOPMENT FINANCIAL INSTITUTION THAT THE LOAN OR LINE OF
21 CREDIT FOR THE APPLICANT HAS CLOSED.

22 ~~§ 4807. Loan guarantees and interest payments.~~ ←

23 ~~(a) Requests. If the department approves an application for~~
24 ~~a loan guarantee under the program, the department may request~~
25 ~~that the authority provide the loan guarantee.~~

26 ~~(b) Loan guarantees.~~

27 ~~(1) An applicant may request a guarantee for a loan to~~
28 ~~assist with agriculture disaster recovery to be made by a~~
29 ~~commercial lending institution or community development~~
30 ~~financial institution for working capital, land restoration,~~

~~floodway restoration or production agriculture. The applicant may be the farmer or the commercial lending institution or community development financial institution applying on behalf of a borrower.~~

~~(2) The application must be on the form required by the department and provide any information required by the department.~~

~~(3) Upon the borrower's meeting the eligibility requirements, the board may approve the guarantee and, if approved, the authority shall execute a guarantee agreement in favor of the commercial lending institution or community development financial institution stating the terms and amounts of the guarantee within the following limitations:~~

~~(i) The amount of the loan guarantee cannot exceed the adjusted loss or \$100,000, whichever is less.~~

~~(ii) The term of the loan cannot exceed 24 months, and the interest rate paid by the board cannot exceed 4%.~~

~~(4) Upon approval of the loan guarantee agreement, the board shall enter into a contract with the commercial lending institution or community development financial institution to reduce the interest rate paid by the applicant on the loan by a maximum of 4%. In return, the board shall make payments to the lender in an amount equal to not more than 100% of the cost of reducing the applicant's annual rate of interest payable on the loan.~~

§ 4807. INTEREST RATE ASSISTANCE.

(A) MINIMUM AMOUNTS.--THE MINIMUM LOAN OR LINE OF CREDIT AMOUNT TO QUALIFY FOR INTEREST RATE ASSISTANCE UNDER THIS ACT SHALL BE \$10,000 AND THE AMOUNT FOR WHICH INTEREST RATE ASSISTANCE CAN BE APPLIED SHALL NOT EXCEED THE ADJUSTED LOSS OR



1 \$100,000, WHICHEVER IS LESS.

2 (B) USE OF LOAN PROCEEDS.--LOAN PROCEEDS MAY BE USED FOR
3 WORKING CAPITAL, LAND RESTORATION, FLOODWAY RESTORATION OR OTHER
4 ELIGIBLE COMMODITY LOSSES, INCLUDING, BUT NOT LIMITED TO, MILK
5 LOSS, AS DETERMINED BY THE DEPARTMENT, BUT SHALL NOT BE USED FOR
6 LAND PURCHASES, EQUIPMENT PURCHASES, REFINANCING EXISTING DEBT
7 OR OUTSTANDING DEBT PAYMENTS.

8 (C) CLOSING.--THE LOAN OR LINE OF CREDIT SHALL BE CLOSED
9 WITHIN 60 DAYS OF THE INTEREST RATE ASSISTANCE APPROVAL DATE.
10 FAILURE TO CLOSE THE LOAN OR LINE OF CREDIT WITHIN THE REQUIRED
11 TIME PERIOD MAY RESULT IN THE REVOCATION OF THE INTEREST RATE
12 ASSISTANCE.

13 (D) REVIEW AND APPROVAL PROCESSES.--INTEREST RATE ASSISTANCE
14 APPLICATIONS SHALL BE REVIEWED AND APPROVED ON A FIRST-COME-
15 FIRST-SERVED BASIS UNTIL AVAILABLE FUNDS ARE EXHAUSTED OR THE
16 APPLICATION PERIOD IS CLOSED, WHICHEVER OCCURS FIRST.

17 (E) REQUESTS.--

18 (1) IF THE DEPARTMENT APPROVES AN APPLICATION FOR
19 INTEREST RATE ASSISTANCE UNDER THE PROGRAM, THE DEPARTMENT
20 MAY ENTER INTO A CONTRACT WITH THE COMMERCIAL LENDING
21 INSTITUTION OR COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION TO
22 REDUCE THE INTEREST RATE PAID BY THE FARMER ON THE LOAN BY A
23 MAXIMUM OF 4%.

24 (2) IN RETURN, THE DEPARTMENT SHALL MAKE PAYMENTS TO THE
25 LENDER IN AN AMOUNT EQUAL TO NOT MORE THAN 100% OF THE COST
26 OF REDUCING THE FARMER'S ANNUAL RATE OF INTEREST PAYABLE ON
27 THE LOAN.

28 Section 2. Section 1552(e) of Title 64, amended June 30,
29 2011 (P.L.193, No.27), is amended and the section is amended by
30 adding a subsection to read:

1 § 1552. First Industries Program.

2 * * *

3 (e) Loan guarantees.--

4 (1) An applicant may request a guarantee for a loan to
5 be made by a commercial lending institution or community
6 development financial institution to assist with the
7 financing of a project related to tourism or agriculture. The
8 applicant may be the commercial lending institution or
9 community development financial institution applying on
10 behalf of a borrower. The application must be on the form
11 required by the board and must include or demonstrate all of
12 the following:

13 (i) The applicant's name and address. If the
14 applicant is a commercial lending institution or
15 community development financial institution, the
16 borrower's name and address.

17 (ii) A description of the project.

18 (iii) A statement describing the anticipated
19 economic impact to the Commonwealth and the host
20 municipality as a result of the project.

21 (iv) A description of the proposed project
22 financing, including terms, conditions and the collateral
23 or security required for the loan for which the guarantee
24 is being requested.

25 (v) A copy of the applicant's last two years of
26 financial statements prepared or reported on by an
27 independent certified public accountant. If the applicant
28 is a commercial lending institution or a community
29 development financial institution, a copy of the
30 borrower's last two years of financial statements

1 prepared or reported on by an independent certified
2 public accountant.

3 (vi) The amount of the loan guarantee that is being
4 requested.

5 (vii) The total project cost and the identification
6 of all sources of capital for the project.

7 (viii) Any other information required by the board.

8 (2) The board shall review the application to determine
9 all of the following:

10 (i) (A) Except as set forth in clause (B), that the
11 project has been awarded a planning grant under this
12 section or that at least \$1,000,000 of private funds
13 are being invested in the project.

14 (B) Beginning on the effective date of this
15 paragraph through July 15, 2015, that the project has
16 been awarded a planning grant under this section or
17 that at least \$500,000 of private funds are being
18 invested in the project.

19 (ii) That the value of the proposed collateral is
20 sufficient to cover the full amount of the loan.

21 (iii) That the applicant complied with all other
22 criteria established by the board.

23 (3) Upon being satisfied that all requirements have been
24 met, the board may approve the guarantee, and, if approved,
25 the authority shall execute a guarantee agreement in favor of
26 the commercial lending institution or community development
27 financial institution stating the terms and amounts of the
28 guarantee. Except as provided in paragraph (3.1) and
29 subsection (e.1), the guarantee may not exceed 50% of the
30 outstanding principal amount of the loan or \$2,500,000 at any

1 point in time, whichever is less. In addition to any other
2 terms and conditions required by the board, the guarantee
3 agreement shall provide for all of the following:

4 (i) The procedure for the submission by the
5 commercial lending institution or community development
6 financial institution of a claim for payment. This
7 procedure shall require that the commercial lending
8 institution or community development financial
9 institution demonstrate that it has exhausted all
10 available remedies against the borrower, other guarantors
11 and collateral before seeking payment under the
12 agreement.

13 (ii) A requirement that a percentage of any moneys
14 recovered subsequent to the payment of a claim by the
15 authority be remitted to the authority.

16 (iii) Periodic reporting requirements by the
17 commercial lending institution or community development
18 financial institution regarding itself and regarding the
19 loans which have been awarded guarantees under this
20 section.

21 (3.1) Beginning on the effective date of this paragraph
22 through July 15, 2015, a guarantee of 51% to 90% of the
23 principal amount of the loan to assist with the financing of
24 a project related to agriculture may be awarded by the board.
25 The guarantee shall be subject to a one-time fee of 2% of the
26 amount of the loan multiplied by the percentage of the
27 guarantee.

28 (3.2) The amount of a guarantee under this subsection,
29 if any, shall be set at the discretion of the board based
30 upon its determination of the potential financial risk to the

Commonwealth.

(4) The board may establish a subcommittee composed of one or more board members and department staff to supervise the progress of projects for which loan guarantees have been awarded under this section.

(e.1) Agriculture disaster loan guarantees.--An applicant may request a guarantee for a loan and paid interest from the authority if the applicant satisfies the requirements of 3 Pa.C.S. Ch. 48 (relating to Agriculture Disaster Recovery Program). Eligible disaster guarantees shall not be subject to the 2% fee, AND SHALL HAVE A PROJECT MINIMUM OF NO LESS THAN \$10,000 AND A PROJECT MAXIMUM WHICH SHALL NOT EXCEED \$100,000. A guarantee of 100% shall be available in the event of a disaster.

* * *

SECTION 3. THE SUM OF \$5,000,000 IS HEREBY APPROPRIATED TO THE DEPARTMENT OF AGRICULTURE FOR DEPOSIT IN THE RESTRICTED ACCOUNT ESTABLISHED UNDER 3 PA.C.S. § 4805.

Section 3 4. This act shall take effect immediately.