
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2273 Session of
2018

INTRODUCED BY DONATUCCI, McCLINTON, KINSEY, MURT, THOMAS,
KAVULICH, DRISCOLL, DAVIS, SCHWEYER AND J. McNEILL,
APRIL 18, 2018

REFERRED TO COMMITTEE ON COMMERCE, APRIL 18, 2018

AN ACT

1 Amending the act of July 2, 1984 (P.L.555, No.111), entitled "An
2 act creating a small business incubator program; providing
3 for grants, loans and loan guarantees to small business
4 incubators; specifying the conditions of and requirements for
5 grants and loans; providing for seed grants; and making
6 appropriations," further providing for definitions, for
7 creation of program, for incubator grants, loans and loan
8 guarantees and for responsibilities of local sponsors;
9 repealing provisions relating to challenge grants for seed
10 capital funds; further providing for general powers and
11 duties of the board and for indicators of program impact;
12 providing for funding; and repealing provisions relating to
13 time limit on approvals.

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

16 Section 1. The definitions of "local sponsor" or "sponsor"
17 and "seed capital fund" in section 2 of the act of July 2, 1984
18 (P.L.555, No.111), known as the Small Business Incubators Act,
19 are amended and the section is amended by adding a definition to
20 read:

21 Section 2. Definitions.

22 The following words and phrases when used in this act shall
23 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 * * *

3 "Applicant." A local sponsor.

4 * * *

5 "Local sponsor" or "sponsor." An organization which enters
6 into a written agreement with the board to establish, operate
7 and administer a small business incubator facility or to provide
8 funding to an organization which operates such a facility,
9 including municipalities, local development districts of the
10 Appalachian Regional Commission, industrial and commercial
11 development authorities established pursuant to the act of
12 August 23, 1967 (P.L.251, No.102), known as the Industrial and
13 Commercial Development Authority Law, redevelopment authorities
14 established pursuant to the act of May 24, 1945 (P.L.991,
15 No.385), known as the Urban Redevelopment Law, municipal
16 authorities organized pursuant to the act of May 2, 1945
17 (P.L.382, No.164), known as the Municipality Authorities Act of
18 1945, or any private nonprofit or for-profit organization
19 approved by the board, including Ben Franklin Technology
20 Partners.

21 ["Seed capital fund." A special investment vehicle which
22 provides equity and other capital to small businesses during the
23 earliest stages of business growth, including businesses in
24 incubators.]

25 * * *

26 Section 2. Sections 3, 4 and 5 of the act are amended to
27 read:

28 Section 3. Creation of program.

29 There is hereby established under the direction of the board
30 a Statewide grant, loan and loan guarantee program for the

1 establishment, operation and administration of small business
2 incubators, to be known as the Small Business Incubator Program.

3 Section 4. Incubator grants, loans and loan guarantees.

4 (a) Application.--A local sponsor may submit an application
5 to the board to obtain a grant, loan or loan guarantee to
6 establish an incubator. Each application shall:

7 (1) Demonstrate that:

8 (I) A facility exists that can be transformed into
9 an incubator at a specified cost; or

10 (II) In the case of new and expansion construction,
11 appropriate existing facilities are not available within
12 the geographic area and an incubator facility will be
13 constructed or expanded at a specified cost. ((1) amended
14 July 9, 1987, P.L.233, No.41)

15 (2) Demonstrate the ability to directly provide or
16 arrange for the provision of business development services
17 for tenants of the incubator. These services shall include,
18 but not be limited to, financial consulting assistance,
19 management and marketing assistance and physical services.

20 (3) Demonstrate a potential for sustained use of the
21 incubator facility by eligible tenants, through a market
22 study or [other means] business plan that identifies
23 sustainability.

24 (4) Demonstrate the ability to manage and operate the
25 incubator facility in accordance with section 5, including
26 ongoing financial responsibilities.

27 (5) Include other information as the board may require
28 through guidelines.

29 (b) Review of application.--The board shall review and
30 accept applications based on the following criteria:

1 (1) Ability of the local sponsor to carry out the
2 provisions of section 5.

3 (2) Economic impact of the incubator on the community.

4 (3) Conformance with areawide and local economic
5 development plans if such exist.

6 (4) Location of the incubator, in order to encourage
7 geographic distribution of incubators across the State.

8 (5) Such other criteria as may be established by the
9 board through guidelines.

10 (c) Grant and loan conditions.--

11 (1) Grants and loans awarded or guaranteed shall be used
12 only for the acquisition and leasing of land and buildings,
13 the construction, rehabilitation and expansion of buildings
14 or other facilities [and], the purchase of equipment and
15 furnishings and operational funds not to exceed 20% of the
16 award, which are necessary for the creation and operation of
17 the incubator.

18 (2) Grants, loans and loan guarantees may not exceed
19 [50%] 80% of total eligible project costs, or [\$650,000]
20 \$800,000, whichever is less. The maximum grant amount awarded
21 in any project may not exceed [\$240,000. Grants shall be
22 provided only to projects located in municipalities
23 designated as distressed under the act of July 2, 1984
24 (P.L.520, No.105), known as the Business Infrastructure
25 Development Act] 20% of the award.

26 (3) Funds loaned shall be secured by lien positions on
27 collateral at the highest level of priority which can
28 accommodate the borrower's ability to raise sufficient debt
29 and equity capital. When the obligation of a local sponsor is
30 guaranteed, the financial institution holding the obligation

1 shall be required to adequately secure the obligation.

2 (4) Grants, loans and loan guarantees for an incubator
3 in which the facility is currently leased shall only be made
4 if the applicant intends to buy the facility. These loans
5 shall be secured by a leasehold mortgage.

6 (5) Payment of interest and principal on loans may be
7 deferred at the discretion of the board.

8 (6) Interest on all loans shall be determined by the
9 secretary and published as a notice in the Pennsylvania
10 Bulletin and shall not be required to be equal throughout
11 this Commonwealth.

12 (7) Funds may be lent for a maximum of ten years or the
13 useful life of the property, as established by the United
14 States Department of Treasury, whichever is greater.

15 (8) If a business operating within an incubator that is
16 administered by a local sponsor relocates outside of this
17 Commonwealth or transfers an ownership interest to an entity
18 located outside of this Commonwealth, the business shall
19 repay the local sponsor the full value of services and
20 assistance the business has received that were funded by
21 grants, loans or guaranteed loans received by the local
22 sponsor under this act. If the local sponsor does not utilize
23 repaid funds to provide services to other businesses in the
24 incubator, the local sponsor shall return the funds to the
25 board. If a local sponsor transfers ownership of an incubator
26 to an entity located outside of this Commonwealth, the local
27 sponsor shall return all grant funds awarded under this act
28 to the board.

29 Section 5. Responsibilities of local sponsors.

30 A local sponsor, or the organization receiving assistance

1 through the local sponsor, shall have the following
2 responsibilities and duties in establishing and operating an
3 incubator with assistance from this program:

4 (1) Secure title on the facility or a lease with the
5 intent to secure title to the facility.

6 (2) Manage the physical development of the incubator
7 facility, including the provision of common conference or
8 meeting space.

9 (3) Furnish and equip the facility to provide business
10 services to the tenants.

11 (4) Market the facility and secure eligible tenants.

12 (5) Provide financial consulting, marketing and
13 management assistance services or arrange for the provision
14 of these services for tenants of the incubator, including
15 assistance in accessing private financial markets.

16 (6) Set rental and service fees.

17 (7) Encourage the sharing of ideas between tenants and
18 otherwise aid the tenants in an innovative manner while they
19 are within the incubator.

20 [(8) Establish policies and criteria for the acceptance
21 of tenants into the incubator. Retail enterprises, not-for-
22 profit enterprises (except not-for-profit enterprises engaged
23 in research and development), wholesale enterprises and
24 personal service enterprises are not permitted as tenants in
25 incubators funded through this act. Up to 20% of the useful
26 square footage of such a facility shall be occupied by an
27 anchor tenant who does not meet these eligibility
28 requirements.

29 (9) Establish a local advisory committee to assist in
30 the performance of these functions.]

1 Section 3. Section 6 of the act is repealed:

2 [Section 6. Challenge grants for seed capital funds.

3 (a) Purpose.--The board is authorized to award challenge
4 grants for the purposes of establishing seed capital funds to
5 assist young small businesses, including businesses in
6 incubators, to create new jobs in this Commonwealth.

7 (b) Application.--Advanced technology centers or other
8 organizations approved by the board may submit applications to
9 receive challenge grants to assist in establishing seed capital
10 funds. Each application shall:

11 (1) Describe the purposes of the proposed seed capital
12 fund, including the types of businesses to receive
13 investments and the types of investments to be made,
14 consistent with subsection (c).

15 (2) Explain the need for the challenge grant in
16 attracting private investment to the proposed seed capital
17 fund.

18 (3) Present a plan for establishing the proposed seed
19 capital fund, including the amount of private investment
20 sought, the strategy for obtaining such investments and the
21 persons or organizations who may manage the fund.

22 (4) List private investment commitments obtained to
23 date.

24 (c) Use of funds.--The board may award challenge grants to
25 eligible applicants following receipt of an application
26 consistent with the criteria specified in this act. Recipients
27 of grants shall not expend any of the funds awarded unless and
28 until the board has assured itself that the following conditions
29 hold:

30 (1) Either:

1 (i) at least \$3 of private investment has been
2 committed to the proposed seed capital fund for every \$1
3 of the challenge grant awarded and at least \$3,000,000 of
4 total investment, including the challenge grant, has been
5 committed to the proposed fund; or

6 (ii) at least \$1 of private investment has been
7 committed to the proposed seed capital fund for every \$1
8 of the challenge grant awarded; at least \$1.5 million of
9 total investment, including the challenge grant, has been
10 committed to the seed capital fund; and no investment is
11 to be made from the fund in a small business project
12 without an equal or greater investment from private
13 sources other than the fund in the same small business
14 project, such that, in total, at least \$3 of private
15 investment has been committed to an individual small
16 business project for every \$1 of challenge grant funds
17 invested.

18 (2) Investments from the seed capital fund will be made
19 exclusively in small businesses located in this Commonwealth,
20 including, but not limited to, tenants of incubators. For the
21 purposes of this section, small businesses shall not include
22 businesses of a mercantile or services related nature, but
23 shall include international export related services,
24 international export related mercantile ventures and advanced
25 technology or computer related ventures which will increase
26 the Commonwealth's share of domestic or international
27 markets.

28 (3) Total investments in a small business using seed
29 capital funds should ordinarily be less than \$250,000 during
30 any round of financing for a small business.

1 (4) The grant recipient shall serve as a limited partner
2 or coinvestor with limited liability in the proposed fund and
3 returns on investment of challenge grant funds shall be
4 reinvested in the seed capital fund.

5 In the event that recipients of funds cannot demonstrate these
6 conditions by June 30, 1986, the grants, or the portions thereof
7 for which the conditions are not satisfied, shall be rescinded
8 by the board and shall be available to the board to use for
9 loans and loan guarantees to incubators consistent with section
10 4.]

11 Section 4. Sections 7 and 8 of the act are amended to read:

12 Section 7. General powers and duties of the board.

13 The board shall:

14 (1) Adopt such rules, statements of policy, procedures,
15 forms and guidelines as may be necessary for the
16 implementation of this act, including the encouragement of
17 incubators in economically distressed areas such as State or
18 federally designated enterprise zones[, municipalities which
19 meet criteria for distress as identified in section 6 of the
20 act of July 2, 1984 (P.L.520, No.105), known as the Business
21 Infrastructure Development Act,] and urban renewal areas
22 designated in conformity with the act of May 24, 1945
23 (P.L.991, No.385), known as the Urban Redevelopment Law:
24 Provided, That it is not the intent of this act to limit the
25 establishment of incubators to such economically distressed
26 areas.

27 (2) Make loans and loan guarantees or grants or a
28 combination of loans and grants to local sponsors for
29 incubators [and award seed capital challenge grants] and, in
30 the sole discretion of the board, provide for the conversion

1 of any liens [issued on or after November 1, 1985,] into
2 grants or into a combination of grants and loans.

3 (3) Ensure that local sponsors receiving loans or loan
4 guarantees and recipients of [challenge] grants meet the
5 conditions of this act.

6 (4) Receive and evaluate annual reports from local
7 sponsors. The annual reports shall include, but not be
8 limited to, a financial statement for the incubator, evidence
9 that all tenants in the facility are eligible under the terms
10 of the legislation and a list of companies in the incubator.

11 [(5) Receive and evaluate annual reports from recipients
12 of seed capital challenge grants. The reports shall include,
13 but not be limited to, the policies and procedures of the
14 seed capital fund, the amount of private investment in the
15 fund and the number, types and amounts of investment in small
16 firms by the fund.]

17 Section 8. Indicators of program impact.

18 On or before March 1 of each year, the board shall provide a
19 report to both the Chief Clerk of the House of Representatives
20 and the Secretary of the Senate which shall include, but not be
21 limited to:

22 (1) The number of applications for incubators submitted
23 to the board.

24 (2) The number of applications for incubators approved
25 by the board.

26 (3) The number of incubators created through this
27 program.

28 (4) The number of tenants occupying each incubator.

29 (5) The number of jobs provided by each incubator and
30 tenants of each incubator.

1 (6) The occupancy rate of each incubator.

2 (7) The number of firms still operating in the
3 Commonwealth after leaving incubators and the number of jobs
4 they have provided. The board shall attempt to identify the
5 reasons why any companies have left the Commonwealth after
6 starting in an incubator.

7 [(8) The number of seed capital funds established with
8 challenge grants, the amount of private investment in the
9 funds and the number, types and amounts of investments in
10 small firms by the funds.]

11 Section 5. The act is amended by adding a section to read:

12 Section 10. Funding sources.

13 Notwithstanding 64 Pa.C.S. Ch. 15 (relating to Commonwealth
14 Financing Authority) to the contrary, the following shall apply:

15 (1) The Commonwealth Financing Authority shall have the
16 authority to incur indebtedness of up to \$20,000,000 under 64
17 Pa.C.S. § 1543 (relating to indebtedness) for programs
18 established in this act.

19 (2) Indebtedness incurred by the authority under 64
20 Pa.C.S. § 1543(a) for the program established in 64 Pa.C.S. §
21 1556 (relating to Tax Increment Financing Guarantee Program)
22 shall not exceed \$80,000,000 in the aggregate.

23 (3) The following apply to proceeds of the indebtedness
24 authorized under paragraph (1):

25 (i) The proceeds shall be transferred from the
26 authority to the board to be used for programs
27 established in this act.

28 (ii) The proceeds are hereby appropriated to the
29 board, on a continuing basis, to be used for programs
30 established in this act. This appropriation shall not

1 lapse at the end of any fiscal year.

2 Section 6. Section 12 of the act is repealed.

3 [Section 12. Time limit on approvals.

4 No assistance under section 4 shall be approved by the board
5 after June 30, 1990.]

6 Section 7. This act shall take effect in 60 days.