

## No. 1984-108

## AN ACT

SB 1438

Providing for agricultural development; establishing the Agricultural Development Advisory Committee and providing for its powers and duties; providing for certain guaranteed loans and interest deferral; providing further duties of the Secretary and Department of Agriculture and the Secretary and Department of Commerce; and making an appropriation.

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

Section 1. Short title.

This act shall be known and may be cited as the Agricultural Development Act.

Section 2. Definitions.

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

“Agricultural activity” or “farming.” The commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products, or fruits and other horticultural products.

“Applicant.” Any family farm enterprise applying for a family farm loan guarantee or an interest deferral.

“Area loan organization.” A local development district of the Appalachian Regional Commission, an industrial development corporation organized and existing under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act, or any other nonprofit economic development organization certified by the Secretary of Agriculture and the Secretary of Commerce as possessing an acceptable loan review committee, professional staff support and such other qualifications as are necessary to evaluate and administer loan guarantees and interest deferrals made under the provisions of this act.

“Committee.” The Agricultural Development Advisory Committee.

“Department.” The Department of Agriculture.

“Eligible agricultural purposes.” Acquisition, construction or rehabilitation of farmland and farm structures located on farmland owned or leased by a family farm enterprise; acquisition, repair or replacement of capital assets, including, but not limited to, equipment and livestock to be used on farmland by a family farm enterprise; and working capital for the acquisition of fertilizer, seed, livestock feed and other supplies to be used on farmland by a family farm enterprise.

“Family farm corporation.” A corporation formed for the purpose of farming in which the majority of the voting stock is held by and the majority of the stockholders are natural persons, or the spouses of such persons or other persons related to such persons or spouses and at least one of such

majority stockholders is residing on or actively operating or managing the farm and none of the stockholders of which are corporations.

“Family farm enterprise.” A natural person, family farm corporation or family farm partnership engaged in farming, including the processing and marketing of its agricultural commodities directly, provided that those agricultural commodities are or would be produced on the farm for which financial assistance is sought.

“Family farm partnership.” A general partnership entered into for the purpose of farming having no more than three unrelated members and having at least one member residing on or actively operating or managing the farm.

“Farmland.” Land in the Commonwealth that is capable of supporting the commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products, fruit or other horticultural products and land in the Commonwealth on which a family farm enterprise would process or market its agricultural commodities directly, provided that those agricultural commodities are or would be produced on the farm for which financial assistance is sought.

“Federal agency.” Includes the United States of America, the President of the United States of America and any department or corporation, agency or instrumentality heretofore or hereafter created, designated or established by the United States of America.

“Lender.” Any bank, savings bank, mutual savings bank, building and loan association and savings and loan association organized under the laws of this Commonwealth or the United States, trust companies, trust companies acting as fiduciaries and other financial institutions subject to the supervision of the Department of Banking; and any foreign or domestic corporation engaged in the business of insurance which is subject to the supervision of the Insurance Commissioner; and any financial institutions operating under the supervision of the Federal farm credit administration. The term shall also mean the seller of the property in cases of seller-sponsored loans or purchase money loans.

“Secretary.” The Secretary of Agriculture.

Section 3: The Agricultural Development Advisory Committee.

(a) Establishment.—There is hereby created the Agricultural Development Advisory Committee.

(b) Composition.—The committee shall be composed of the following:

- (1) The Secretary of Agriculture, who will serve as chairman.
- (2) The chairmen of the Senate and House Agriculture and Rural Affairs Committees or their respective designees.
- (3) Six members to be appointed by the Secretary of Agriculture as follows:
  - (i) one officer from a commercial lending institution experienced in agricultural financing;
  - (ii) three farmers;
  - (iii) one officer from a farm credit association; and

(iv) one agricultural economist.

A majority of the committee shall constitute a quorum. In appointing the three farmers to the committee, the Secretary of Agriculture may consider farmers recommended by the Statewide general farm organizations.

(c) Appointment, terms and vacancies.—The members of the committee initially appointed by the Secretary of Agriculture and any person appointed by the secretary to fill a vacancy shall serve until June 30, 1987.

(d) Staff services.—The Department of Agriculture shall provide staff services for carrying out the committee's powers and duties under this act, including liaison between the committee and lenders, the Department of Agriculture, the Department of Commerce, and other agencies of the Commonwealth whose facilities and services may be useful to the committee in its work.

(e) Expenses of committee members.—The members of the committee shall be entitled to no compensation for their services as members, but shall be entitled to reimbursement for all necessary expenses incurred in connection with the performance of their duties as members of the committee.

Section 4. Reports to General Assembly.

On or before March 1 of each year in which loan guarantees or interest deferrals are outstanding, the secretary shall submit a report to the Secretary of the Senate and the Chief Clerk of the House of Representatives detailing each loan guarantee and interest deferral accepted or rejected by type, amount, interest rate, lending institution, location, dates of application and final decision, type of farm, and acreage of farm. The secretary shall also estimate the amount of farmland preserved and the increase in the amount of farm receipts in the Commonwealth due to this program.

Section 5. General powers and duties of the secretary.

The secretary may exercise all powers necessary or appropriate to carry out this act, including the following powers, in addition to others herein granted:

(1) To review all applications for interest deferrals and loan guarantees under this act.

(2) To determine, after consideration of the recommendations of the Secretary of Commerce and the committee, which applications for interest deferrals and loan guarantees should be rejected, which applications should be approved, and which applications should be approved subject to special conditions.

(3) To determine, after consideration of the recommendations of the Secretary of Commerce and the committee, the criteria and procedures of the interest deferral and loan guarantee programs.

(4) To conduct examinations necessary to:

(i) the determination of an applicant's eligibility to receive an interest deferral or loan guarantee;

(ii) the determination of the economic viability of the interest deferral or loan guarantee; and

(iii) the power to review the operation of any family farm enterprise that has received an interest deferral or loan guarantee.

(5) In determining eligibility for an interest deferral or a loan guarantee, to consult with the board and staff of any local farm credit association or agricultural stabilization and conservation service office in the area where an applicant resides or where the family farm enterprise is located or proposed to be located.

(6) To determine the information to be provided by the applicant, the lender and the committee.

Section 6. Review of applications by the Secretary of Commerce.

(a) Form of application.—Prior to recommending the approval or rejection of any interest deferral or loan guarantee authorized by this act, the Secretary of Commerce shall receive from the prospective lender an application in the form and manner prescribed by the Secretary of Agriculture and the Secretary of Commerce together with any other information as they shall require the prospective borrower and the prospective lender to provide.

(b) Review of application.—Upon receipt of a properly submitted and documented application, the Secretary of Commerce shall conduct a financial review of the application and recommend approval, approval with special conditions, or rejection of the application on the basis of the following criteria and the eligibility criteria and loan limits prescribed by section 8:

(1) The ability of the applicant to meet and satisfy all debt service as it becomes due and payable.

(2) The sufficiency of available collateral.

(3) The relevant criminal and credit history and ratings of the applicant as determined from credit reporting services and other sources.

(4) The eligibility of the applicant and the project for the guarantee or interest deferral which is being sought.

(5) The capital needs of the applicant.

(6) The payment to date of all tax obligations due and owing by the applicant to the Commonwealth or any political subdivision thereof.

(7) Evidence that insufficient private funds are available at reasonable rates and terms within the necessary time without the requested assistance.

(c) Transmittal to the Secretary of Agriculture.—Following the review and recommendation, the Secretary of Commerce shall transmit the application and the recommendation on that application to the Secretary of Agriculture together with the rationale for that recommendation and any other information requested by the Secretary of Agriculture and the Secretary of Commerce.

(d) Use of area loan organizations.—In carrying out his duties and responsibilities under this section, the Secretary of Commerce may utilize area loan organizations which have been certified by the Secretary of Agriculture and the Secretary of Commerce. In determining if an area loan organization should be certified for the purposes of this act, the secretaries shall consider, in addition to other relevant factors, the expertise of that area loan organization in matters relating to agriculture. The secretaries may certify an area loan organization for the purposes of performing some duties and responsibilities under this section but deny certification for the purpose of performing other duties and responsibilities for which the organization is

determined not to have sufficient expertise or personnel. Area loan organizations may establish and charge reasonable fees for processing loan guarantees and interest deferrals under this act with the approval of the secretary.

**Section 7. Review of applications by the committee and the Secretary of Agriculture.**

(a) **Application form.**—Prior to recommending the approval or rejection of any interest deferral or loan guarantee authorized by this act, the committee shall receive from the prospective borrower an application in the form and manner prescribed by the secretary together with any such other information as the secretary shall require the prospective borrower and the prospective lender to provide.

(b) **Majority required.**—The committee shall not recommend the approval of an application for an interest deferral or a loan guarantee unless a majority of the quorum present at a meeting vote in favor of the action.

(c) **Financial status of borrower.**—In determining whether to recommend any interest deferral or loan guarantee in accordance with this act, the committee shall give primary consideration to the borrower's ability to repay and secondary consideration to the security available.

(d) **Recommendation to secretary.**—The committee shall forward its recommendation of the approval or rejection of any interest deferral or loan guarantee to the secretary together with the rationale for the committee's decision, any other information requested by the secretary and any recommendation of special conditions to be placed on an approved interest deferral or loan guarantee. If the committee does not submit its recommendation to the secretary within 90 days, the committee shall be deemed to have recommended approval of the application.

(e) **Criteria for committee recommendations.**—In determining whether to recommend the approval or rejection of any interest deferral or loan guarantee, the committee shall adhere to the eligibility criteria and loan limits prescribed by section 8.

(f) **Action by the secretary.**—The secretary shall grant an interest deferral or a loan guarantee to an applicant only after consideration of the recommendation of the committee and the recommendation of the Secretary of Commerce and only in accordance with the eligibility criteria and loan limits prescribed by section 8. The secretary may grant an interest deferral or a loan guarantee in a lesser amount and on less favorable terms than recommended by the committee or the Secretary of Commerce and may impose conditions not recommended by the committee or the Secretary of Commerce.

**Section 8. Eligibility for interest deferrals and loan guarantees and limitations thereon.**

(a) **Eligibility criteria.**—To be eligible for an interest deferral or a loan guarantee, an applicant must demonstrate:

(1) That he is a resident of the Commonwealth, or that its principal operating or managing members or shareholders in the case of either a family farm partnership or a family farm corporation are Pennsylvania residents or show sufficient evidence that he or they intend to become a

resident or residents. If the applicant is a corporation, it must be a Pennsylvania corporation in order to be eligible.

(2) That the applicant or the principal operating or managing members or shareholders thereof have sufficient education, training or experience in the type of farming for which he or they wish the interest deferral or loan guarantee and will participate in a farm management program, approved by the secretary, for the duration of the loan on which the interest will be deferred or for the duration of the loan guarantee.

(3) That the applicant has been processed by a lender for the loan on which the interest deferral or loan guarantee is sought and that the lender will make and service such loan. The lender shall be required to adequately secure the loan.

(4) That the applicant will use the loan proceeds for the eligible agricultural purposes as defined in section 2 and that the farmland or family farm enterprise is located in Pennsylvania.

(5) That the applicant is credit worthy, based on the applicant's net worth, cash flow projections, and credit rating and on the type of farmland or family farm enterprise involved.

(6) That the terms offered by the lender without an interest deferral or loan guarantee are not adequate to permit the applicant to carry out the agricultural purposes for which he is seeking the loan.

(7) That the loan guarantee or interest deferral would:

(i) facilitate the continued operation or transfer of a farm in this Commonwealth which is currently active;

(ii) help the applicant to replace all or part of its production with production of a commodity or commodities for which there is more likely to be an adequate market; or

(iii) help the family farm enterprise to process or market directly a commodity or commodities produced on the farm for which financial assistance is sought.

(b) **Loan limit for acquiring farmland and farm structures.**—The secretary may guarantee a loan or loans not to exceed the lesser of 90% of the amount of the loan or loans or \$200,000 for each family farm enterprise for a term not to exceed 20 years if the loan is guaranteed for the purpose of acquiring farmland, farm structures or a combination thereof.

(c) **Loan limit for acquiring equipment, livestock and other capital assets.**—The secretary may guarantee a loan or loans not to exceed the lesser of 90% of the amount of the loan or loans or \$150,000 for each family farm enterprise for a term not to exceed seven years if the loan guaranteed is for the purchase of capital assets, such as, but not limited to, equipment or livestock and horticultural assets.

(d) **Loan limit for acquiring noncapital assets.**—The secretary may guarantee a loan or loans not to exceed the lesser of 90% of the amount of the loan or loans or \$50,000 for each family farm enterprise for a term not to exceed one year if the loan guaranteed is for the purchase of fertilizer, seed, livestock feed or other supplies normally used for agricultural activity or farming.

(e) Interest deferrals.—The secretary may make the interest payments for an applicant for up to the first three years of a loan if the loan is guaranteed in accordance with this section or is in the amount and for the purposes for which a loan may be guaranteed in accordance with this section. The secretary, in conjunction with the Secretary of Commerce, shall prescribe the period during which, and the terms under which, the applicant shall reimburse the Commonwealth for the interest which the secretary paid to the lender on the applicant's behalf and the security which the applicant must provide to assure reimbursement to the Commonwealth.

Section 9. Sale or conveyance by applicant.

(a) Obligation due on sale.—Any applicant who sells or conveys the property for which an interest deferral or loan guarantee was granted shall immediately return the entire indebtedness still owed to the lender, if any.

(b) Default.—Any applicant who fails to maintain the land covered by an interest deferral or a loan guarantee for a period of time longer than one year shall be in default. Such a default may be waived by the secretary, after consultation with the committee and the Secretary of Commerce, in the event of a physical disability or other extenuating circumstances.

Section 10. Guidelines and regulations.

(a) General rule.—The secretary and Secretary of Commerce shall promulgate such rules, regulations, guidelines, forms or procedures and standards necessary to carry out this act.

(b) One-year exemption from review.—In order to facilitate the speedy implementation of this program, the secretary and the Secretary of Commerce shall have the power and authority to promulgate, adopt and use guidelines which shall be published in the Pennsylvania Bulletin. The guidelines shall not be subject to review pursuant to section 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, and, except as provided in subsection (d), shall be effective for a period not to exceed one year from the effective date of this act.

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

(d) Exception.—The General Assembly may provide for an extension of the guidelines adopted pursuant to subsection (b), if the Leadership Committee created pursuant to sections 3 and 4 of the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act, extends the guidelines adopted pursuant to subsection (b).

Section 11. Limitation on amount of interest deferrals and loan guarantees.

The sum of all outstanding interest deferrals and loan guarantees at any time shall not exceed \$25,000,000. Under no circumstances shall the Secretary of Agriculture, the Secretary of Commerce or the committee have power to pledge the credit or taxing power of the Commonwealth.

Section 12. Conflict of interest prohibited.

No member of the committee or officer or employee of the Department of Agriculture or the Department of Commerce or member or employee of an area loan organization shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement under this act for any matter, cause or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against the Commonwealth, provided that nothing herein shall prohibit a commercial lending institution or a farm credit association from either directly or indirectly being a party to or being in any manner interested in any such contract or agreement if one of its officers is a member of the committee as long as such officer declares his conflict of interest and refrains from participating in any deliberation or vote on, or other action regarding, such contract or agreement. If any contract or agreement shall be made in violation of this section, the same shall be null and void and no action shall be maintained thereon against the Commonwealth.

Section 13. Appropriation.

The sum of \$10,000,000 is hereby appropriated to the Department of Agriculture from the Pennsylvania Economic Revitalization Fund for the purposes set forth in this act. The appropriation made hereby shall be a continuing appropriation.

Section 14. Limitation.

No loan guarantees or interest deferrals pursuant to this act shall be approved after June 30, 1987.

Section 15. Effective date.

This act shall take effect immediately.

APPROVED—The 2nd day of July, A. D. 1984.

DICK THORNBURGH