

No. 1986-111

AN ACT

SB 1466

Amending the act of July 2, 1984 (P.L.545, No.109), entitled "An act establishing a loan program for capital development projects; providing for the use of funds made available under the Appalachian Regional Development Act of 1965 and the Public Works and Economic Development Act of 1965; providing for loans, loan guarantees and other programs for capital development projects of small businesses; creating the Capital Loan Fund; providing standards for and requirements of the program; and making appropriations," providing for export assistance loans; and removing provisions relating to guidelines.

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

Section 1. Section 2 of the act of July 2, 1984 (P.L.545, No.109), known as the Capital Loan Fund Act, amended December 20, 1985 (P.L.364, No.104), is amended to read:

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:

"Appalachian Regional Commission." The Appalachian Regional Commission created and established by the Appalachian Regional Development Act.

"Appalachian Regional Development Act." The Appalachian Regional Development Act of 1965 (40 U.S.C. App. § 1 et seq.), as amended.

"Apparel industry loans." Loans made under the provisions of this act to manufacturers of apparel products.

"Apparel products." Products manufactured, woven, cut, sewn or otherwise similarly processed by mechanical or human effort from fabrics, leather or cloth made for use as clothing, shoes or other attire.

"Area loan organization" or "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 or designated by the secretary as possessing an acceptable loan review committee, professional staff support and such other qualifications necessary to evaluate and administer loans made under the provisions of this act.

"Board." The Apparel Industry Loan Board.

"Capital development project" or "project." Land, buildings, equipment and machinery and working capital which is acquired, constructed, renovated or used by a small business enterprise as part of a for-profit project or venture not of a mercantile or services-related nature, except that

small business enterprises shall include **[international]** export-related services and international export-related mercantile ventures or advanced technology and computer-related services and mercantile ventures which will increase Pennsylvania's national or international market shares.

"Class I loans." Loans made under the provisions of this act, utilizing funds made available to the department under the Appalachian Regional Development Act of 1965 (40 U.S.C. § 302).

"Class II loans." Loans made under the provisions of this act, utilizing funds made available to the department under the Public Works and Economic Development Act of 1965 (42 U.S.C. § 3121 et seq.).

"Class III loans." All loans made under the provisions of this act other than Class I, Class II [or], apparel industry loans *or export assistance loans*.

"Department." The Department of Commerce.

"*Export assistance loans.*" *Loans made under the provisions of this act to small business enterprises for the financing of export development projects.*

"*Export development project.*" *Land, buildings, machinery, equipment or working capital for the manufacture of products to be exported out of the United States by a small business enterprise as part of a for-profit project or venture not of a mercantile or services-related nature.*

"Fund." The Capital Loan Fund created and established by this act.

"Public Works and Economic Development Act." The Public Works and Economic Development Act of 1965 (42 U.S.C. § 3121 et seq.), as amended.

"Secretary." The Secretary of Commerce.

"Small business enterprise." A for-profit corporation, partnership or proprietorship which is small enough to be aided by assistance provided under this act, including small business enterprises located in small business incubator facilities.

"Working capital." Capital used by a small business enterprise for operations, excluding fixed assets and production machinery and equipment.

Section 2. Section 3(d) of the act is repealed.

Section 3. Section 4 of the act is amended by adding a subsection to read:

Section 4. Eligibility for loans; terms and conditions.

* * *

(e) *Export assistance loans.*—

(1) *The secretary may make advances from the fund, subject to terms, conditions and restrictions provided under this act, to area loan organizations for the purpose of making export assistance loans: Provided, however, That no loans shall be made which would do any of the following:*

(i) *Cause, aid or assist in, directly or indirectly, the relocation of any business operations from one part of this Commonwealth to another, unless there is at least a 15% increase in net employment.*

(ii) *Supplant funding that is otherwise available expeditiously from private sector sources on commercially reasonable terms.*

(iii) *Be for the purpose of refinancing any portion of the total project cost or other existing loans or debt.*

(iv) *Be for the purpose of financing projects located outside the geographic boundaries of this Commonwealth.*

(v) *Be for the purpose of paying off an existing creditor.*

(vi) *Provide funds, directly or indirectly, for payment, distribution or as a loan to owners, partners or shareholders of the small business enterprise, except as ordinary compensation for services rendered.*

(vii) *Provide funds for speculation in any kind of property, real or personal, tangible or intangible.*

(2) *Assistance shall only be provided to small business enterprises which are penetrating or significantly increasing their penetration of export markets.*

(3) *To be eligible for an export assistance loan, a small business enterprise must provide the following:*

(i) *A signed contract for export.*

(ii) *Appropriate assurances of payment for exported products to be provided by the contract.*

(iii) *Other information as required by the secretary.*

(4) *All loans shall be secured by lien positions on collateral at the highest level of priority which can accommodate the borrower's ability to raise sufficient debt and shall be made for such a period and bear such interest as may be determined by the area loan organization with the approval of the secretary. The secretary may defer interest and principal payments at his discretion.*

(5) *Loans may be made in an amount not exceeding 50% of the total project cost or \$200,000, whichever is less.*

(6) *Export assistance loan recipients are not disqualified from receiving Class I, II or III or apparel loans because of eligibility to apply for an export assistance loan: Provided, however, That the loans approved shall not exceed in the aggregate 50% of the total project cost or \$200,000, whichever is less.*

Section 4. Section 5(c) of the act is amended to read:

Section 5. Application and administration.

* * *

(c) *Class III and export assistance loans.—*

(1) *The secretary may designate an area loan organization to receive loan applications from small business enterprises and administer loan portfolios in each area of the Commonwealth. Applications shall be made to the area loan organization in the form and manner as the secretary and the organization may require.*

(2) *Upon receipt of the application, the area loan organization shall investigate and review the application and either approve or disapprove the loan application by proper action of the governing body of the organization. The decision action of the organization shall be based, in whole or in part, upon the following criteria:*

(i) Ability of applicant to meet and satisfy all debt service as it becomes due and payable.

(ii) Sufficiency of available collateral, including satisfactory lien positions on real and personal property.

(iii) Relevant criminal and credit history and ratings of applicant as determined from outside credit reporting services and other sources.

(iv) Number of net new employment opportunities created by the proposed project. *This criterion shall apply to export assistance loans.*

(v) Eligibility of applicant as a small business enterprise.

(vi) Capital needs of the small business enterprise.

(vii) Whether the small business enterprise will enhance this Commonwealth's national and international market shares.

(viii) Conformity or nonconformity of the project, in all respects, to the provisions of this act.

(3) Upon approval of the loan application by the area loan organization, the organization shall forward the application and all supporting documentation which the secretary shall require, including a copy of the proper resolution of the governing body, to the secretary for review and final approval or disapproval. The secretary shall review each application and supporting documentation to ensure the following:

(i) Eligibility of the business enterprise and the project for which loan proceeds will be used.

(ii) Creation of a satisfactory number of new net employment opportunities within the Commonwealth. *This criterion shall apply to export assistance loans.*

(iii) Compliance with the loan amount limitations provided by this act.

(iv) Proper procedural action by the area loan organization.

(v) Payment to date of all tax obligations due and owing to the Commonwealth or any political subdivision thereof.

(vi) Conformity of all aspects of the loan transaction with the substantive and procedural provisions of this act and regulations promulgated hereunder.

All decisions of the secretary regarding the approval or disapproval of loans under this act, including eligibility of business enterprises and loan projects, shall be final.

(4) The secretary shall, to the extent practicable, notify the area loan organization and the applicant business enterprise of his or her final approval or disapproval of the loan application within 30 business days after the receipt of the application. In the case of approval of a loan application, the secretary shall arrange to draw the loan amount from the Capital Loan Fund and advance the sum to the area loan organization. The advance shall be a debt obligation of the organization to the Commonwealth and shall be evidenced by a note or bond issued by the organization in an amount equal to the amount actually advanced and secured in a manner as the secretary shall require. Upon receipt of the advance, the area loan organization shall make the advance available to the small busi-

ness enterprise in the form of a loan transaction, which loan shall be evidenced by a note executed by the small business enterprise, secured in a manner as the organization and the secretary shall require and conform in all respects to the loan package as approved by the organization and the secretary.

(5) All loans shall be administered and monitored by the appropriate area loan organization in accordance with policies and procedures prescribed by the secretary. Each area loan organization shall submit reports to the department as the secretary shall require, but in no case less than twice a year. Said report shall show the following:

- (i) Each outstanding loan.
- (ii) The date approved.
- (iii) The original principal amount.
- (iv) The current principal balance.
- (v) The interest rate.
- (vi) The purpose for which the loan was made.
- (vii) An enumeration of any problems or issues which have arisen with regard to each loan.
- (viii) A statement regarding the progress of the small business enterprise in creating its requisite number of new long-term employment opportunities. *This item shall apply to export assistance loans.*
- (ix) Such other information and documentation as the secretary shall require.

(6) In the event that a small business enterprise shall fail to comply with and create the number of new employment opportunities specified in its approved application, the secretary shall impose a penalty equal to an increase in the interest to 2% greater than the current prime interest rate for the remainder of the loan unless the penalty is waived by the secretary because the failure is due to circumstances outside of the control of the small business enterprise. *This penalty shall not apply to companies receiving only export assistance loans.* The penalty shall be payable in installments which the secretary deems appropriate. Immediate notice of penalties and waivers of penalties (with reasons therefor) shall be submitted by the secretary to the Chief Clerk of the House of Representatives and the Secretary of the Senate.

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Section 5. Sections 6 and 11 of the act, amended December 20, 1985 (P.L.364, No.104), are amended to read:

Section 6. Loan guarantees; other programs.

(a) Guarantees; endorsements and sureties.—The secretary may make advances or provide other means of guaranteed payment from the Capital Loan Fund to area loan organizations for the purpose of guaranteeing, endorsing or acting as surety on the bonds, notes, contracts, mortgages or other obligations of small business enterprises on such terms and conditions and according to such policies and procedures as the secretary may prescribe. Such guarantees, endorsements or sureties may be provided only for those small business enterprises and manufacturers of apparel products and in con-

nection with those capital development projects which conform in all respects to the provisions of section 4(c) or (d), *or for export development projects which conform in all respects to the provisions of section 4(e)*. Further, area loan organizations and the secretary shall, in reviewing applications for guarantees, endorsements or sureties, base their respective decisions regarding approval or disapproval upon the findings and determinations required under section 5(c).

(b) Grants for loan reserve funds or reimbursing loan losses.—The secretary may provide grants and other financial assistance to area loan organizations for the purpose of establishing loan reserve funds or reimbursing loan losses to commercial banks and other financial institutions in order to encourage the expansion and financing of small business enterprises and manufacturers of apparel products in the Commonwealth consistent with the purposes of this act.

Section 11. Guidelines and regulations.

[(a) General rule.—] The secretary shall adopt policies, procedures and guidelines and promulgate rules and regulations necessary to carry out this act.

[(b) One-year exemption from review.—]In order to facilitate the speedy implementation of this program, the department 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. The department shall have the power and authority to promulgate, adopt and use guidelines as provided herein to implement the apparel industry loan program which guidelines shall be effective for a period not to exceed one year unless extended as provided in subsection (d).

(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 6. This act shall take effect immediately.

APPROVED—The 9th day of July, A. D. 1986.

DICK THORNBURGH