

No. 1988-120

AN ACT

HB 2415

Establishing a loan program for the purpose of making loans to business enterprises for the purchase of machinery and equipment; creating the Machinery and Equipment Loan Fund; providing for the use of funds made available through the Machinery and Equipment Loan Fund; and establishing standards for and requirements of the program.

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 Machinery and Equipment Loan Fund 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:

“Business enterprise.” A for-profit corporation, partnership or proprietorship.

“Department.” The Department of Commerce of the Commonwealth.

“Fund.” The Machinery and Equipment Loan Fund created and established by this act.

“Secretary.” The Secretary of Commerce of the Commonwealth.

Section 3. Machinery and Equipment Loan Fund.

(a) **Creation.**—There is hereby created a special account in the Treasury Department, to be known as the Machinery and Equipment Loan Fund, to which shall be credited all program appropriations made by the General Assembly, all proceeds from loan repayments, and any and all other deposits, payments or contributions from any other source made available to the fund. The fund shall operate as a revolving fund whereby all appropriations, payments and interest made thereto may be applied and reapplied to the purposes of this act.

(b) **Credits to fund.**—All appropriations, deposits and contributions made to the fund shall be immediately credited in full to the fund, and earnings on the moneys held in the fund shall also be credited to the fund for the purposes of this act.

Section 4. Eligibility for loans; terms and conditions.

(a) **Loans; general rules.**—The secretary shall make advances from the fund, subject to the terms, conditions and restrictions provided under this act, for the purpose of making loans to business enterprises involved in industrial processes, mining, manufacturing or other industrial sectors, as defined by the department, to acquire and install new machinery and equipment or upgrade existing machinery and equipment. All loans shall be subject to the following conditions:

- (1) Be for eligible firms under the provisions of this act.
 - (2) Have a maximum loan ceiling of \$500,000 or 50% of the cost of the project, whichever is less.
 - (3) Be limited to the purchase and installation of new equipment and machinery or the upgrade of existing machinery and equipment.
 - (4) Be limited to projects that demonstrate the creation or retention of one job for every \$25,000 received from the fund.
 - (5) Have an interest rate which shall be established by the secretary based upon the current and longer term unemployment levels of the region of this Commonwealth within which the project is located.
 - (6) Have a term of not in excess of ten years or the useful life of the machinery or equipment purchased or upgraded, whichever is less.
- (b) Restrictions.—No loans shall be made that do any of the following:
- (1) Cause, aid or assist in, directly or indirectly, the relocation of any business operation from one part of this Commonwealth to another, unless there is at least a 25% increase in net employment.
 - (2) Supplant funding that is otherwise available expeditiously from private sector sources on commercially reasonable terms.
 - (3) Be for the purpose of refinancing any portion of the total project cost or other existing loans or debt.
 - (4) Be for the purpose of financing projects located outside the geographic boundaries of this Commonwealth.
 - (5) Be for the purpose of paying off a creditor that is inadequately secured and is in a position to sustain a loss.
 - (6) Be for the purpose of repaying a debt owed to a small business investment company.
 - (7) Provide funds for speculation in any kind of property, real or personal, tangible or intangible.
- (c) Security.—All loans shall be secured by liens on the equipment purchased and other sufficient collateral as determined by the secretary.

Section 5. Application and administration.

- (a) Procedures.—Application and administration procedures for fund loans shall be established by the secretary.
- (b) Receipt.—The secretary shall receive applications from eligible firms for machinery and equipment loans. Applications shall be made to the secretary in the form and manner as the department may require.
- (c) Investigation.—Upon receipt of the application, the secretary shall investigate and review the application and either approve or disapprove the loan application by proper action of the department. The decision action of the secretary shall be based, in whole or in part, upon the following criteria:
 - (1) Ability of the applicant to meet and satisfy all debt service as it becomes due and payable.
 - (2) Sufficiency of available collateral, including satisfactory lien positions on real and personal property.
 - (3) Eligibility of the applicant as a business enterprise involved in industrial processes, manufacturing, mining or other industrial sectors as defined by the secretary.

(4) Sufficient evidence that funds shall be used only to acquire and install new equipment and machinery or upgrade existing equipment and machinery.

(5) Capital need of the applicant.

(6) Conformity of the project to the provisions of this act.

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

(8) Number of net employment opportunities created and retained by the proposed project.

(9) Supporting evidence that loan project will increase the firm's competitiveness and value added within its respective industry.

(10) Explanation of how loan will aid the Commonwealth in its efforts to assist business enterprises to increase their productivity and improve the future competitive position of this Commonwealth's industries.

(11) Compliance with the loan amount limitations provided for machinery and equipment loans.

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

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

(14) Such information and documentation as the secretary shall require.

(d) Notification.—The secretary shall notify the applicant of final approval or disapproval of the loan application within a reasonable period of time following 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 fund and advance the sum to the recipient. The advance shall be made available in the form of a loan transaction, which loan shall be evidenced by a note executed by the recipient and secured in a manner as the secretary shall require in conformity in all respects to the loan as approved by the secretary.

(e) Policy requirements and report.—All loans shall be administered and monitored by the department in accordance with the policies and procedures prescribed by the secretary. On or before June 30 each year, the secretary shall prepare a report that includes the following:

(1) Each outstanding loan.

(2) The date of approval.

(3) The original principal balance.

(4) The current principal balance.

(5) The interest rate.

(6) The purpose for which the loan was made.

(7) An enumeration of any problems or issues which have arisen with regard to each loan.

(8) A statement regarding the progress of the business in creating and retaining its requisite number of employment opportunities.

(9) Such other information and documentation as the secretary shall require.

(f) Penalty for noncompliance.—In the event that a loan recipient shall not comply with its approved application by failing to create or preserve the number of employment opportunities specified in its approved application, the secretary shall impose a penalty equal to an increase in the interest rate 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 the control of the loan recipient. The penalty shall be payable in installments that the secretary deems appropriate.

Section 6. Powers of secretary.

The secretary shall have and may exercise all powers and authority necessary to the proper administration and implementation of this act and shall have the authority to adopt policies, procedures and guidelines and promulgate rules and regulations necessary to effectuate the provisions of this act.

Section 7. Reporting and inspection.

(a) Inspection.—Each business enterprise which applies for or receives assistance under this act, upon reasonable request of the department, shall permit duly authorized employees of the department to inspect the plant, books and records of the business enterprise.

(b) Updating.—Each business enterprise shall update the information given to the department in its application if conditions change or to the extent that the information given originally becomes inaccurate or misleading.

(c) Periodic reports.—Each recipient of assistance under this act shall provide the department with periodic financial reports as the secretary may require until such time as the loan is paid off.

Section 8. Nondiscrimination.

No loan shall be made to a business enterprise unless the business enterprise certifies to the department, in a form satisfactory to the department, that it shall not discriminate against any employee or any applicant for employment because of race, religion, color, national origin, sex or age. The business enterprise shall also certify to the department that it is not currently under citation for pollution violations and that in the future it will meet all applicable antipollution standards.

Section 9. Conflict of interest.

No employee of the department shall, either directly or indirectly, be a party to or have any financial interest in any contract or agreement arising pursuant to this act.

Section 10. Reports to the General Assembly.

(a) Annual reports.—On or before June 30 of each year, the secretary shall provide a report to the Chief Clerk of the House of Representatives and to the Secretary of the Senate. The report shall describe all relevant activities of the department pursuant to this act and shall include the following:

- (1) List of business enterprises receiving loans from the fund and the amounts and terms of this assistance.
- (2) Loan amounts repaid.
- (3) Loans outstanding and balances due, including delinquent payments.

(4) Jobs created by businesses receiving funds in all previous years.

(5) Other relevant information as determined by the Secretary of Commerce.

(b) Availability of departmental reports.—Reports received by the department under section 5(e) shall be made available upon request to members of the General Assembly.

Section 11. Effective date.

This act shall take effect immediately.

APPROVED—The 21st day of October, A. D. 1988.

ROBERT P. CASEY