

No. 1986-103

AN ACT

HB 2101

Amending the act of July 2, 1984 (P.L.520, No.105), entitled "An act establishing a business infrastructure development program for making grants and loans for infrastructure necessary to complement industrial or commercial investment by private companies; prescribing requirements of and conditions for grants and loans; and making an appropriation," further providing for loans and grants and their requirements and conditions; and removing provisions relating to guidelines and regulations.

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

Section 1. Sections 2, 4, 5, 6 and 7 of the act of July 2, 1984 (P.L.520, No.105), known as the Business Infrastructure Development Act, are 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:

"Department." The Department of Commerce.

"*Distressed community.*" *A community designated as distressed by the department. The department shall publish a list of distressed communities as a notice in the Pennsylvania Bulletin.*

"*Enterprise zone.*" *A specific location within identifiable boundaries within a distressed municipality, which is designated as an enterprise zone by the Secretary of the Pennsylvania Department of Community Affairs.*

"*Facility.*" *The land, buildings or depreciable assets into which a private company or private developer makes a new private investment and which is complemented by an infrastructure improvement funded under this act.*

"Infrastructure improvements." The construction, rehabilitation or repair of drainage systems; energy facilities (power generation and distribution); fire safety facilities (excluding vehicles); sewer systems (pipe, treatment); transportation directly affecting the site of the proposed private investment, including roads, sidewalks, bridges, rail, port, river, airport or pipeline (excluding vehicles); waste disposal; **[and]** water supply (storage, treatment and distribution); *or the purchase, clearing or preparation of land in distressed communities.*

"Local sponsor." Any municipality, any industrial and commercial authority organized pursuant to, or industrial development company as certified by the department pursuant to the act of August 23, 1967 (P.L.251, No.102), known as the Industrial and Commercial Development Authority Law; *or industrial development company certified pursuant to the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act;* any council of government organization or

any multimunicipal agency organization created pursuant to the act of July 12, 1972 (P.L.762, No.180), referred to as the Intergovernmental Cooperation Law; any municipal authority **[organization]** *organized* pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945; any redevelopment authority organized pursuant to the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law; and any local development district of the Appalachian Regional Commission.

“Municipality.” Any county, city, borough, incorporated town, township or home rule municipality.

“Private company.” Any agricultural, industrial, manufacturing or research and development enterprise or enterprises, as defined in section 3 of the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

“Private match.” Any new private investment by **[the]** *a private company, or in a distressed community, by a private developer, in [land, buildings and depreciable fixed assets and infrastructure improvements at the project site of the infrastructure improvements funded under this act] a facility or infrastructure improvements at the site of a facility.*

“Publicly owned property.” Property which is **[accessible to the general public and is not under the control of a private firm] owned by a governmental entity.**

“Secretary.” The Secretary of Commerce.

“Small community.” A municipality with a population of 50,000 or less. Section 4. Grant and loan procedure.

(a) Private company commitments.—An application for a grant or loan shall be initiated by a private company, *or in a distressed community, by a private developer*, which shall submit a letter of intent or signed contractual agreement to locate, expand or build a facility to a local sponsor whose jurisdiction includes, at least in part, the site of the facility. The letter of intent shall include:

(1) A commitment that the proposed facility will create a minimum of ten net new full-time equivalent jobs, will create at least a 4% increase in full-time equivalent jobs in the case of expansion of an enterprise already located at the site *of the facility*, or at least a **[25%] 10%** increase in full-time equivalent jobs pursuant to section 7**[(h)] (g)** and will create at least one net new full-time equivalent job for every \$15,000 either loaned or granted for the **[project] infrastructure improvements. In the case of a private developer, commitments must be presented from private companies for at least 50% of the jobs required to meet the requirements of this paragraph.**

(2) A statement of intention to *own, operate or manage* the facility for a minimum of five years.

(3) A statement that the specific infrastructure improvements are necessary for the efficient and cost-effective operation of the proposed business or industry, together with supporting financial and engineering documentation.

(4) [A notarized statement of willingness to grant the local sponsor a lien on the facility for which the infrastructure is being provided, up to the amount of] *A statement of willingness to provide security adequate to cover* the cost of the *grant or* loan, including principal and interest due and owing to the date of foreclosure and any penalty imposed by the secretary, required to provide the infrastructure[, which lien may be foreclosed in the event that the private company fails to operate in the facility for at least five years] *except in the event that the grant is made to a local government.*

(b) Application to the department.—Upon receipt of the request for assistance from a private company *or private developer*, the local sponsor may apply to the department for a loan or grant. The application from the local sponsor shall include, but not be limited to:

(1) A statement of the purpose of the proposed loan or grant, including a list of eligible items and the cost of each.

(2) A statement showing the sources of funding for the entire *infrastructure improvement* project, including the private company's *or private developer's* investment in [the] *such* project and any public and other private sources of funding.

(3) A contractual agreement or signed letter of intent from a private [firm] *company or private developer*, as specified in this section.

(4) Evidence that there will be a private match [in the following amounts:

(i) At] *of at least \$2 for every \$1 of State assistance.], if the assistance requested is \$500,000 or less.*

(ii) *At least \$3 for every \$1 of State assistance, if the assistance requested is greater than \$500,000 but not greater than \$1,000,000.*

(iii) *At least \$4 for every \$1 of State assistance if the assistance requested is greater than \$1,000,000 but not greater than \$1,500,000.]*

(5) Demonstration that the private [firm] *company or private developer* is financially sound and is likely to fulfill the commitments made in its letter of intent.

(6) A proposed timetable for the provision of the infrastructure improvements.

(7) Evidence that the project will be expeditiously carried out and completed as planned.

(8) A demonstration that insufficient local capital improvement funds at reasonable rates and terms are available within the necessary time to provide the needed infrastructure improvement on public property. This includes local funds available through issuance of bonds or other means, State funds available through existing programs and available Federal program funds such as community development block grant funds, urban development action grant funds and economic development administration funds.

(9) A demonstration that insufficient private funds are available at reasonable rates and terms within the necessary time to fund infrastructure improvements on property owned by the private company *or private developer*.

(10) Evidence of consistency with local and areawide economic development plans where such exist.

(c) Grant and loan evaluation.—The department shall consider grant and loan applications based on the following criteria:

(1) The number of net new full-time equivalent jobs that will be provided and the amount of additional State and local tax revenue that will be directly generated by the private company's *or private developer's* new or expanded industrial or commercial investment.

(2) The degree of economic distress in the jurisdiction of the local sponsor and, when appropriate, the surrounding area, as measured by rates of unemployment, income levels and other criteria as the department shall establish by rules or guidelines.

(3) The ability to repay the interest and principal, in the case of a loan.

(4) The increase in the manufacturing base of the Commonwealth *as measured by increased manufacturing employment opportunities to be generated within three years of the completion of the infrastructure improvement.*

Section 5. Loan repayment.

The department shall establish such guidelines, rules and regulations for the repayment of funds loaned, *including interest rates and other terms*, pursuant to this act as may be necessary. **These provisions shall include, but not be limited to, the following:], *subject to the following conditions:***

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

(2) **[The rate of interest charged by the department for infrastructure not on publicly owned property shall be no less than the interest rate on the bonds sold pursuant to the act of July 2, 1984 (P.L.512, No.104), known as the Pennsylvania Economic Revitalization Act.**

(3) **For all *loans made by the department for* infrastructure improvements funded through this act which occur on publicly owned property, repayment of funds loaned will involve only the principal amount loaned and no interest will be charged against the funds made available.**

[(4)] (3) No loan shall exceed \$1,500,000.

Section 6. Grants.

[Grants for infrastructure on publicly owned property necessary to complete eligible projects, consistent with the criteria set forth in this act, shall be permitted only in Enterprise Development Areas designated as such by the Secretary of the Department of Community Affairs, or in those municipalities which are experiencing three or more of the following problems:

(1) Twenty percent or more of the population with incomes below the poverty level as reported in the latest decennial census.

(2) Fifteen percent or more of the labor force is unemployed as reported in the census of 1980 or as reported in a survey done by the municipality.

(3) Five percent or more loss of population between 1970 and 1980 as reported by the Bureau of the Census of the United States Department of Commerce.

(4) Significant business vacancy rate within the area, either in gross footage or acreage or in the number of business or industrial buildings.

(5) Significant reduction in employment since 1977.]

(a) *Infrastructure improvements.*—*Infrastructure improvements in enterprise zones or distressed communities are eligible for grant assistance consistent with the criteria set forth in this act.*

(b) *Private property.*—*Grants made to a local sponsor for infrastructure improvements to a private company's or private developer's private property shall be loaned by the local sponsor to such private company or private developer subject to the following conditions:*

(1) *The department from time to time will determine interest rate and maturity date ranges for the loans.*

(2) *All loans shall be adequately secured by collateral furnished by the private company or private developer consistent with the purposes of this act, as determined by the local sponsor.*

(3) *Loan repayments may be used by the local sponsor for development projects eligible under any other Commonwealth infrastructure program.*

(c) *Limitation.*—*No grant shall exceed \$1,500,000.*

Section 7. Special provisions.

(a) Limit on grants and loans to particular municipalities.—No more than 10% of funds appropriated pursuant to this act shall be loaned or granted to local sponsors in a particular municipality.

(b) [Limit on grants for infrastructure on publicly owned property.—In no case shall more than 10% of the funds appropriated in any State fiscal year pursuant to this act be utilized as specified in section 6, nor shall any municipality receive more than one grant in any single fiscal year.

(c) Minimum allocation to small communities.—A minimum of 25% of the grants and loans issued pursuant to this act shall be allocated to small communities.

[(d)] (c) Evidence of eligibility.—No loan or grant shall be made without substantiation of the provisions of section 4.

[(e)] (d) [Liens.—Funds loaned will be secured by lien positions on collateral at the highest level of priority the department determines feasible to accommodate the project, consistent with section 4(a)(4)] *Security.*—*Loans made by the department for infrastructure improvements funded under this act must be adequately secured.*

[(f)] (e) Penalty.—Private companies or private developers which receive loan funds but fail to create the number of jobs specified in an approved application shall be liable for a penalty equal to an increase in the interest charged 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 private company or private developer. The penalty shall be payable in installments which the secretary deems appropriate. Immediate notice of penalties and waivers of penalties[, including the penalties in section 4(a)(4), with the reasons thereof,] shall be submitted by the secretary to the Chief Clerk of the House

of Representatives and to the Secretary of the Senate, along with the secretary's decision on the imposition of penalties and the reasons for this decision.

[(g)] (f) Withholding of liquid fuel tax allocation.—Municipalities receiving interest free loans which fail to meet their repayment obligations shall have all or part of their liquid fuel tax allocation withheld or other penalties, as the department may prescribe. The secretary shall immediately give the name of the municipality and the reasons for, and amount of, the penalty to both the Chief Clerk of the House of Representatives and the Secretary of the Senate.

[(h)] (g) Relocation; job increase.—This act is expressly not intended to encourage the relocation of a company from one jurisdiction within the Commonwealth to another. Any request by a local sponsor for assistance to be provided a firm which currently operates a similar business in the Commonwealth must be accompanied by a demonstration that the total net increase in full-time equivalent jobs, using the current number of jobs in all similar businesses operated by the private company in the Commonwealth as a base, shall be at least 10%. This requirement shall not apply to private companies relocating from small business incubators.

Section 2. Section 9 of the act is repealed.

Section 3. This act shall take effect immediately.

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

DICK THORNBURGH