
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 234 Session of
2015

INTRODUCED BY BREWSTER, FONTANA, HAYWOOD, TEPLITZ, MENSCH,
SCHWANK, COSTA, KITCHEN, YUDICHAK, BROWNE AND HUGHES,
JANUARY 28, 2015

REFERRED TO COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT,
JANUARY 28, 2015

AN ACT

1 Amending Title 12 (Commerce and Trade) of the Pennsylvania
2 Consolidated Statutes, in small business first, further
3 providing for capital development loans, for loans in
4 distressed communities, for pollution prevention assistance
5 loans and for export financing loans.

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

8 Section 1. Sections 2306, 2308, 2309 and 2310 of Title 12 of
9 the Pennsylvania Consolidated Statutes, amended October 22, 2014
10 (P.L.2569, No.161), are amended to read:

11 § 2306. Capital development loans.

12 (a) Application.--A small business may submit an application
13 and any applicable application fee to a certified economic
14 development organization requesting a loan or line of credit for
15 certain costs of a capital development project under 64 Pa.C.S.
16 § 1121 (relating to common application process). The application
17 shall be on the form required by the authority and shall include
18 or demonstrate all of the following, in addition to the contents

1 required under 64 Pa.C.S. § 1121(b):

2 (1) The name and address of the applicant.

3 (2) A statement of the type and amount of assistance
4 sought.

5 (3) A statement of the capital development project,
6 including a detailed statement of the cost of the project.

7 (4) A financial commitment from a responsible source for
8 any cost of the capital development project in excess of the
9 amount requested.

10 (5) Any other information required by the authority.

11 (b) Certified economic development organization review.--

12 (1) Upon receipt of a completed application, a certified
13 economic development organization shall investigate and
14 determine all of the following:

15 (i) If the applicant is a small business.

16 (ii) If the project is a capital development
17 project.

18 (iii) If, when the applicant is a small business,
19 the capital development project demonstrates a
20 substantial likelihood of creating or preserving
21 employment activities in this Commonwealth or if, when
22 the applicant is an agricultural producer, the project
23 demonstrates a substantial likelihood of enhancing and
24 growing normal agriculture operations.

25 (iv) The ability of the applicant to meet and
26 satisfy the debt service as it becomes due and payable.

27 (v) The existence and sufficiency of collateral for
28 the loan.

29 (vi) Relevant criminal and credit history and
30 ratings of the applicant as determined from outside

1 credit reporting services and other sources.

2 (vii) The number of employment opportunities to be
3 created or preserved by the proposed capital development
4 project.

5 (viii) If the applicant complied with all other
6 criteria established by the authority.

7 (2) Upon being satisfied that all requirements have been
8 met, the certified economic development organizations shall
9 recommend the applicant to the authority and forward the
10 application with all supporting documentation to the
11 authority for its review and approval.

12 (c) Authority review.--

13 (1) Within 30 days of receiving a recommendation and a
14 completed application, the authority shall review the
15 application. If the authority is satisfied that all
16 requirements have been met, the authority may approve the
17 loan request in accordance with the following:

18 (i) A loan for land, buildings and machinery and
19 equipment may not exceed [\$400,000 or 50%] \$250,000 or
20 75% of the total capital development project costs,
21 whichever is less. For the purposes of this subparagraph,
22 capital development project costs incurred during the
23 [12-month] 18-month period prior to the date of
24 submission of the application to the authority shall be
25 considered part of the total capital development project
26 costs.

27 (ii) A loan or line of credit for working capital
28 may not exceed [\$100,000] \$150,000 or 75%.

29 (iii) Except for loans to agricultural producers, a
30 loan must create or preserve one job for every \$25,000

1 loaned. The authority may, by submitting notice to the
2 Legislative Reference Bureau for publication in the
3 Pennsylvania Bulletin, periodically update the amount
4 under this subparagraph, based on changes in unemployment
5 statistics, inflation, the authority's cash flow and the
6 need to keep this Commonwealth and the businesses of this
7 Commonwealth competitive.

8 (2) The authority shall notify the certified economic
9 development organization and applicant of its decision.

10 (d) Approvals.--For applications which are approved, the
11 authority shall draw an advance equal to the principal amount of
12 the loan from the fund. The advance shall be forwarded to the
13 certified economic development organization and, upon receipt by
14 the certified economic development organization, shall become an
15 obligation of the certified economic development organization.
16 Prior to providing loan funds to the applicant, the certified
17 economic development organization shall require the applicant to
18 execute a note and to enter into a loan agreement. In addition
19 to the requirements of subsection (e), the loan agreement shall
20 include a provision requiring the recipient to use the loan
21 proceeds to pay the costs of the capital development project.
22 The authority may require the certified economic development
23 organization to impose other terms and conditions on the
24 recipient if the authority determines that they are in the best
25 interests of this Commonwealth, including a provision requiring
26 collateral for any penalty imposed under subsection (g).

27 (e) Loan terms.--A loan agreement entered into in accordance
28 with subsection (c) shall do all of the following:

29 (1) State the collateral securing the loan. All loans
30 shall be secured by lien positions on collateral at the

1 highest level of priority as may be determined by the
2 certified economic development organization with the approval
3 of the authority.

4 (2) State the repayment period in accordance with the
5 following:

6 (i) A loan for real property shall have a repayment
7 period of up to [15] 18 years.

8 (ii) A loan for machinery and equipment shall have a
9 repayment period of up to [ten] 13 years.

10 (iii) A loan or line of credit for working capital
11 shall have a repayment period of up to [three] six years.
12 A line of credit may be renewed for an additional three-
13 year period at the discretion of the authority.

14 (iv) If, in a capital development project, there are
15 two or more uses planned, the loan terms may be blended.

16 (3) State the interest rate in accordance with the
17 following:

18 (i) Except as provided in subparagraph (ii), loans
19 shall be made at an interest rate not to exceed [5%] 4.5%
20 for the term of the loan.

21 (ii) A loan to a small business which is an
22 agricultural producer shall be made at an interest rate
23 of not less than [2%] 1.5% for the term of the loan if
24 all of the following apply:

25 (A) A declaration under 35 Pa.C.S. § 7301(c)
26 (relating to general authority of Governor) is in
27 effect for at least ten days prior to the date of
28 application.

29 (B) The application is made within nine months
30 of termination of the declaration.

1 (C) The agricultural producer is in the area
2 which has been declared to be a natural disaster
3 area.

4 (f) Loan administration.--A loan made under this section
5 shall be administered in accordance with authority policies and
6 procedures by the certified economic development organization
7 which made the loan. Each certified economic development
8 organization shall submit an annual report on the form required
9 by the authority and which includes or demonstrates all of the
10 following:

11 (1) Each outstanding loan.

12 (2) The date approved.

13 (3) The original principal amount.

14 (4) The current principal balance.

15 (5) The interest rate.

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

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

19 (8) A statement regarding the progress of the small
20 business in creating or preserving its requisite number of
21 employment opportunities.

22 (9) Any other information or documentation required by
23 the authority.

24 (g) Penalty.--

25 (1) Except as provided in paragraph (2), the authority
26 shall impose a penalty upon a recipient if the recipient
27 fails to create or preserve the number of employment
28 opportunities specified in its approved application.

29 (2) The authority may waive the penalty required by
30 paragraph (1) if the authority determines that the failure

1 was due to circumstances outside the control of the
2 recipient.

3 (3) The amount of the penalty imposed under paragraph
4 (1) shall be equal to an increase in the interest rate to
5 [2%] 2.5% greater than the current prime interest rate for
6 the remainder of the loan.

7 (h) Defaults.--The authority may by foreclosure take title
8 to a capital development project which it financed if
9 acquisition is necessary to protect a loan made under this
10 section. The authority shall pay all costs arising out of the
11 foreclosure and acquisition from moneys held in the fund. The
12 authority may, in order to minimize financial losses and sustain
13 employment, lease the capital development project. The authority
14 may withdraw moneys from the fund to purchase first mortgages
15 and to make payments on first mortgages on any capital
16 development project which it financed where purchase or payment
17 is necessary to protect a loan made under this section. The
18 authority may sell, transfer, convey and assign the first
19 mortgages and shall deposit any moneys derived from the sale of
20 any first mortgages in the fund.

21 § 2308. Loans in distressed communities.

22 (a) Application.--A small business located in a distressed
23 community may submit an application and any applicable
24 application fee to a certified economic development organization
25 requesting a loan or line of credit for certain costs of a
26 capital development project under 64 Pa.C.S. § 1121(a) (relating
27 to common application process). The application shall be on the
28 form required by the authority and shall include or demonstrate
29 all of the following, in addition to the contents required under
30 64 Pa.C.S. § 1121(b):

1 (1) The name and address of the applicant.

2 (2) A statement that the small business is engaged in
3 business-to-public service or in the mercantile, commercial
4 or point-of-sale retail business sectors.

5 (3) A statement of the type and amount of assistance
6 sought.

7 (4) A statement of the capital development project,
8 including a detailed statement of the cost of the project.

9 (5) A financial commitment from a responsible source for
10 the cost of the capital development project in excess of the
11 amount requested.

12 (6) Any other information required by the authority.

13 (b) Certified economic development organization review.--

14 (1) Upon receipt of a completed application, a certified
15 economic development organization shall investigate and
16 determine all of the following:

17 (i) If the applicant is a small business which is
18 engaged in business-to-public service or in the
19 mercantile, commercial or point-of-sale retail business
20 sectors in accordance with conditions or criteria
21 established by the authority.

22 (ii) If the project is a capital development
23 project.

24 (iii) If the applicant has demonstrated a direct
25 impact on the community in which the capital development
26 project is or will be located, on residents of that
27 community or on the local and/or regional economy. The
28 authority shall establish criteria that will assist in
29 making this demonstration.

30 (iv) Number of employment opportunities to be

1 created or preserved by the proposed capital development
2 project.

3 (v) If the applicant complied with all other
4 criteria established by the authority.

5 (2) Upon being satisfied that all requirements have been
6 met, the certified economic development organization shall
7 recommend the applicant to the authority and forward the
8 application with all supporting documentation to the
9 authority for its review and approval.

10 (c) Authority review.--

11 (1) Upon receipt of a recommendation and a completed
12 application, the authority shall investigate and determine
13 all of the following:

14 (i) The ability of the applicant to meet and satisfy
15 the debt service as it becomes due and payable. In
16 reviewing repayment obligations, loans shall not be
17 approved on the basis of direct financial return on
18 investment and shall not be held to the loan loss
19 standards of private commercial lenders. Loans shall be
20 reviewed for the purpose of establishing a strong
21 economic base and promoting entrepreneurial activity
22 within the distressed community.

23 (ii) The existence and sufficiency of collateral for
24 the loan.

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

28 (2) If the authority is satisfied that all requirements
29 have been met, the authority may approve the loan or line of
30 credit request in an amount not to exceed [\$200,000 or 50%]

1 \$250,000 or 75% of the total capital development project
2 costs, whichever is less. For the purpose of this paragraph,
3 capital development project costs, except the costs related
4 to working capital, incurred during the [12-month] 18-month
5 period prior to the date of submission of the application to
6 the authority shall be considered part of the total capital
7 development project costs.

8 (3) The authority shall notify the certified economic
9 development organization and applicant of its decision.

10 (d) Approvals.--For applications which are approved, the
11 authority shall draw an advance equal to the principal amount of
12 the loan from the fund and, prior to providing loan funds to the
13 applicant, the authority shall require the applicant to execute
14 a note and to enter into a loan agreement. In addition to the
15 requirements of subsection (e), the loan agreement shall include
16 a provision requiring the recipient to use the loan proceeds to
17 pay the costs of the capital development project. The authority
18 may impose other terms and conditions on the recipient if the
19 authority determines they are in the best interests of this
20 Commonwealth, including a provision requiring collateral for any
21 penalty imposed under subsection (g).

22 (e) Loan terms.--A loan agreement entered into in accordance
23 with subsection (d) shall do all of the following:

24 (1) State any collateral securing the loan. The
25 authority may use its best judgment to identify and secure
26 collateral.

27 (2) State the repayment period which may be flexible,
28 except that a line of credit may not have a term of more than
29 three years. A line of credit may be renewed for an
30 additional three-year period at the discretion of the

1 authority.

2 (3) State the interest rate which may not be less than
3 [2%] 1.5% nor more than [5%] 4.5% for the term of the loan.

4 (4) State that the recipient agrees to maintain, at a
5 minimum, the number of jobs in existence as of the date of
6 loan application.

7 (f) Loan administration.--A loan made under this section
8 shall be administered in accordance with authority policies and
9 procedures.

10 (g) Penalty.--

11 (1) Except as provided in paragraph (2), the authority
12 shall impose a penalty upon a recipient if the recipient
13 fails to preserve the number of employment opportunities
14 specified in its approved application.

15 (2) The authority may waive the penalty required by
16 paragraph (1) if the authority determines that the failure
17 was due to circumstances outside the control of the
18 recipient.

19 (3) The amount of any penalty imposed under paragraph
20 (1) shall be equal to an increase in the interest rate to
21 [2%] 2.5% greater than the current prime interest rate for
22 the remainder of the loan.

23 (h) Defaults.--The authority may take title by foreclosure to a
24 capital development project which it financed where acquisition
25 is necessary to protect a loan made under this section. The
26 authority shall pay all costs arising out of the foreclosure and
27 acquisition from money held in the fund. The authority may, in
28 order to minimize financial losses and sustain employment, lease
29 the capital development project. The authority may withdraw
30 money from the fund to purchase first mortgages and to make

1 payments on first mortgages on any capital development project
2 which it financed if purchase or payment is necessary to protect
3 a loan made under this section. The authority may sell,
4 transfer, convey and assign the first mortgages and shall
5 deposit in the fund money derived from the sale of any first
6 mortgages.

7 § 2309. Pollution prevention assistance loans.

8 (a) Application.--A small business may submit an application
9 and any application fee to a certified economic development
10 organization requesting a loan for a pollution prevention
11 infrastructure under 64 Pa.C.S. § 1121(a) (relating to common
12 application process). The application shall be on the form
13 required by the authority and shall include or demonstrate all
14 of the following, in addition to the contents required under 64
15 Pa.C.S. § 1121(b):

16 (1) The name and address of the applicant.

17 (2) A statement of the amount of loan assistance sought.

18 (3) A statement of the pollution prevention
19 infrastructure, including a detailed statement of the cost of
20 the infrastructure.

21 (4) A financial commitment from a responsible source for
22 the cost of the pollution prevention infrastructure in excess
23 of the amount requested.

24 (5) Any other information required by the authority.

25 (b) Certified economic development organization review.--

26 (1) Upon receipt of a completed application, a certified
27 economic development organization shall investigate and
28 determine all of the following:

29 (i) If the applicant is a small business.

30 (ii) If the project is for pollution prevention

1 infrastructure.

2 (iii) If the applicant complied with all other
3 criteria established by the authority.

4 (2) Upon being satisfied that all requirements have been
5 met, the certified economic development organization shall
6 recommend the applicant to the department and forward the
7 application with all supporting documentation to the
8 authority for its review and approval.

9 (c) Authority review.--

10 (1) Upon receipt of a recommendation and a completed
11 application, the authority shall investigate and determine
12 all of the following:

13 (i) If the pollution prevention infrastructure
14 demonstrates a substantial likelihood of preventing or
15 reducing pollution. The Department of Environmental
16 Protection shall assist the authority in reviewing the
17 applications and provide technical assistance.

18 (ii) The ability of the applicant to meet and
19 satisfy the debt service as it becomes due and payable.
20 In reviewing repayment obligations, loans shall not be
21 approved on the basis of direct financial return on
22 investment and shall not be held to the loan loss
23 standards of private commercial lenders. Loans shall be
24 reviewed for the purpose of reducing pollution through
25 source reduction technologies or processes.

26 (iii) The existence and sufficiency of collateral
27 for the loan.

28 (iv) Relevant criminal and credit history and
29 ratings of the applicant as determined from outside
30 credit reporting services and other sources.

1 (2) If the authority is satisfied that all requirements
2 have been met, the authority may approve the loan request. A
3 loan approved under this subsection may not exceed the lesser
4 of:

5 (i) [\$100,000] \$150,000; or

6 (ii) [75%] 85% of infrastructure costs.

7 (3) The authority shall notify the certified economic
8 development organization and applicant of its decision.

9 (d) Approvals.--For applications which are approved, the
10 authority shall draw an advance equal to the principal amount of
11 the loan from the Pollution Prevention Assistance Account. Prior
12 to providing loan funds to the applicant, the authority shall
13 require the applicant to execute a note and to enter into a loan
14 agreement. In addition to the requirements of subsection (e),
15 the loan agreement shall include a provision requiring the
16 recipient to use the loan proceeds to pay the costs of the
17 pollution prevention infrastructure. The authority may impose
18 other terms and conditions on the recipient if the authority
19 determines they are in the best interests of this Commonwealth,
20 including a provision requiring collateral for any penalty
21 imposed under subsection (g).

22 (e) Loan terms.--A loan agreement entered into in accordance
23 with subsection (d) shall do all of the following:

24 (1) State the collateral securing the loan. All loans
25 shall be secured by lien positions on collateral at the
26 highest level of priority as may be determined by the
27 authority.

28 (2) State the repayment period which may not exceed [10]
29 15 years.

30 (3) State that the interest rate is [2%] 1.5%.

1 (4) State that any loan fee is not to exceed [5%] 3.5%
2 of the loan amount.

3 (f) Loan administration.--A loan made under this section
4 shall be administered in accordance with authority policies and
5 procedures.

6 (g) Penalty.--

7 (1) Except as provided in paragraph (2), the authority
8 shall impose a penalty upon a recipient if the recipient
9 fails to carry out the pollution prevention infrastructure
10 project as specified in its approved application.

11 (2) The authority may waive the penalty required by
12 paragraph (1) if the authority determines that the failure
13 was due to circumstances outside the control of the
14 recipient.

15 (3) The amount of any penalty imposed under paragraph
16 (1) shall be equal to an increase in the interest rate to
17 [2%] 3% greater than the current prime interest rate for the
18 remainder of the loan.

19 (h) Defaults.--The authority may take title by foreclosure
20 to a pollution prevention infrastructure which it financed if
21 acquisition is necessary to protect a loan made under this
22 section. The authority shall pay all costs arising out of the
23 foreclosure and acquisition from money held in the Pollution
24 Prevention Assistance Account. The authority may, in order to
25 minimize financial losses and sustain employment, lease the
26 pollution prevention infrastructure. The authority may withdraw
27 money from the Pollution Prevention Assistance Account to
28 purchase first mortgages and to make payments on first mortgages
29 on any pollution prevention infrastructure which it financed if
30 the purchase or payment is necessary to protect a loan made

1 under this section. The authority may sell, transfer, convey and
2 assign the first mortgages and shall deposit any money derived
3 from the sale of any first mortgages in the Pollution Prevention
4 Assistance Account.

5 § 2310. Export financing loans.

6 (a) Application.--A person may submit an application and any
7 applicable application fee to a certified economic development
8 organization requesting a loan for certain costs of a capital
9 development project which will be used in export activities
10 under 64 Pa.C.S. § 1121(a) (relating to common application
11 process). The application must be on the form required by the
12 authority and must include or demonstrate all of the following,
13 in addition to the contents required under 64 Pa.C.S. § 1121(b):

14 (1) The name and address of the applicant.

15 (2) A statement of the amount of loan assistance sought.

16 (3) A statement of the capital development project,
17 including a detailed statement of the cost of the project.

18 (4) A financial commitment from a responsible source for
19 any cost of the capital development project in excess of the
20 amount requested.

21 (5) A statement that the loan, if approved, would not
22 supplant funding from private sector sources on commercially
23 reasonable terms.

24 (6) Any other information required by the authority.

25 (b) Review.--Upon receipt of a completed application, the
26 authority shall investigate and determine all of the following:

27 (1) If the applicant is an export business.

28 (2) If the project is a capital development project.

29 (3) The ability of the applicant to meet and satisfy the
30 debt service as it becomes due and payable.

1 (4) The existence and sufficiency of collateral for the
2 loan.

3 (5) Relevant criminal and credit history and ratings of
4 the applicant as determined from outside credit reporting
5 services and other sources.

6 (6) Number of employment opportunities to be created or
7 preserved by the proposed capital development project.

8 (7) If the applicant complied with all other criteria
9 established by the authority.

10 (c) Approvals.--If the authority is satisfied that all
11 requirements have been met, the authority may approve the loan
12 request. A loan approved under this section may not exceed
13 [\$350,000] \$400,000. The authority shall notify the applicant
14 and, if applicable, the certified economic development
15 organization of its decision. The authority shall reserve an
16 amount equal to the principal amount of the loan within the fund
17 or the special account authorized by section 2304(c)(2)
18 (relating to fund and accounts). Prior to providing funds to the
19 applicant, the authority shall require the applicant to execute
20 a note and enter into a loan agreement. In addition to the
21 requirements of subsection (d), the loan agreement shall include
22 a provision requiring the recipient to use the loan proceeds to
23 pay the costs of the capital development project. The authority
24 may impose other terms and conditions on the recipient if the
25 authority determines they are in the best interests of this
26 Commonwealth, including any of the following:

27 (1) A provision requiring collateral for any penalty
28 imposed under subsection (f).

29 (2) A provision requiring the person to be eligible for
30 an insurance policy.

1 (3) A provision requiring the loan to be guaranteed by
2 the Working Capital Guaranty Program offered by the Ex-Im
3 Bank.

4 (4) A provision requiring an export credit sales
5 contract insured by an insurance policy.

6 (d) Loan terms.--A loan agreement entered into in accordance
7 with subsection (c) shall do all of the following:

8 (1) State the collateral securing the loan. All loans
9 shall be secured by lien positions on collateral at the
10 highest level of priority as may be determined by the
11 authority.

12 (2) State the repayment period as determined by the
13 authority.

14 (3) State the interest rate as determined by the
15 authority.

16 (e) Loan administration.--A loan made under this section
17 shall be administered in accordance with authority policies and
18 procedures.

19 (f) Penalty.--

20 (1) Except as provided in paragraph (2), the authority
21 shall impose a penalty upon a recipient if the recipient
22 fails to carry out the export activities specified in its
23 approved application.

24 (2) The authority may waive the penalty required by
25 paragraph (1) if the authority determines that the failure
26 was due to circumstances outside the control of the
27 recipient.

28 (3) The amount of the penalty imposed under paragraph
29 (1) shall be equal to an increase in the interest rate to 2%
30 greater than the current prime interest rate for the

1 remainder of the loan.

2 (g) Defaults.--The authority may, by foreclosure, take title
3 to a capital development project which it financed if
4 acquisition is necessary to protect a loan made under this
5 section. The authority shall pay all costs arising out of the
6 foreclosure and acquisition from money held in the fund or a
7 special account authorized by section 2304(c)(2). The authority
8 may, in order to minimize financial losses and sustain
9 employment, lease the capital development project. The authority
10 may withdraw money from the fund or a special account authorized
11 by section 2304(c)(2) to purchase first mortgages and to make
12 payments on first mortgages on any capital development project
13 which it financed if purchase or payment is necessary to protect
14 a loan made under this section. The authority may sell,
15 transfer, convey and assign the first mortgages and shall
16 deposit any money derived from the sale of any first mortgages
17 in the fund or a special account authorized by section 2304(c)
18 (2).

19 Section 2. This act shall take effect in 60 days.