
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 217 Session of
2013

INTRODUCED BY BREWSTER, KITCHEN, KASUNIC, STACK, YUDICHAK,
SMITH, BROWNE, FONTANA, TEPLITZ, SOLOBAY, VULAKOVICH,
WASHINGTON, FERLO, WAUGH, HUGHES, BLAKE, TARTAGLIONE AND
FARNESE, FEBRUARY 21, 2013

REFERRED TO COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT,
FEBRUARY 21, 2013

AN ACT

1 Amending Title 12 (Commerce and Trade) of the Pennsylvania
2 Consolidated Statutes, further providing for capital
3 development loans, for loans in distressed communities, for
4 pollution prevention assistance loans and for export
5 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 are amended to read:

10 § 2306. Capital development loans.

11 (a) Application.--A small business may submit an application
12 and any applicable application fee to its area loan organization
13 requesting a loan for certain costs of a capital development
14 project. The application shall be on the form required by the
15 department and shall include or demonstrate all of the
16 following:

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

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

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

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

6 (5) Any other information required by the department.

7 (b) Area loan organization review.--

8 (1) Upon receipt of a completed application, an area
9 loan organization shall investigate and determine all of the
10 following:

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

12 (ii) If the project is a capital development
13 project.

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

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

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

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

28 (vii) The number of employment opportunities to be
29 created or preserved by the proposed capital development
30 project.

1 (viii) If the applicant complied with all other
2 criteria established by the department.

3 (2) Upon being satisfied that all requirements have been
4 met, the area loan organizations shall recommend the
5 applicant to the department and forward the application with
6 all supporting documentation to the department for its review
7 and approval.

8 (c) Department review.--

9 (1) Within 30 days of receiving a recommendation and a
10 completed application, the department shall review the
11 application. If the department is satisfied that all
12 requirements have been met, the department may approve the
13 loan request in accordance with the following:

14 (i) A loan for land, buildings and machinery and
15 equipment may not exceed [\$200,000 or 50%] \$250,000 or
16 75% of the total capital development project costs,
17 whichever is less. For the purposes of this subparagraph,
18 capital development project costs incurred during the
19 [12-month] 18-month period prior to the date of
20 submission of the application to the department shall be
21 considered part of the total capital development project
22 costs.

23 (ii) A loan for working capital may not exceed
24 [\$100,000 or 50%] \$150,000 or 75% of the total capital
25 development project costs, whichever is less.

26 (iii) Except for loans to agricultural producers, a
27 loan must create or preserve one job for every \$25,000
28 loaned.

29 (2) The department shall notify the area loan
30 organization and applicant of its decision.

1 (d) Approvals.--For applications which are approved, the
2 department shall draw an advance equal to the principal amount
3 of the loan from the fund. The advance shall be forwarded to the
4 area loan organization and, upon receipt by the area loan
5 organization, shall become an obligation of the area loan
6 organization. Prior to providing loan funds to the applicant,
7 the area loan organization shall require the applicant to
8 execute a note and to enter into a loan agreement. In addition
9 to the requirements of subsection (e), the loan agreement shall
10 include a provision requiring the recipient to use the loan
11 proceeds to pay the costs of the capital development project.
12 The department may require the area loan organization to impose
13 other terms and conditions on the recipient if the department
14 determines that they are in the best interests of this
15 Commonwealth, including a provision requiring collateral for any
16 penalty imposed under subsection (g).

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

19 (1) State the collateral securing the loan. All loans
20 shall be secured by lien positions on collateral at the
21 highest level of priority as may be determined by the area
22 loan organization with the approval of the department.

23 (2) State the repayment period in accordance with the
24 following:

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

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

29 (iii) A loan for working capital shall have a
30 repayment period of up to [three] six years.

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

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

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

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

12 (A) A declaration under 35 Pa.C.S. § 7301(c)
13 (relating to general authority of Governor) is in
14 effect for at least ten days prior to the date of
15 application.

16 (B) The application is made within nine months
17 of termination of the declaration.

18 (C) The agricultural producer is in the area
19 which has been declared to be a natural disaster
20 area.

21 (f) Loan administration.--A loan made under this section
22 shall be administered in accordance with departmental policies
23 and procedures by the area loan organization which made the
24 loan. Each area loan organization shall submit an annual report
25 on the form required by the department and which includes or
26 demonstrates all of the following:

- 27 (1) Each outstanding loan.
28 (2) The date approved.
29 (3) The original principal amount.
30 (4) The current principal balance.

1 (5) The interest rate.

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

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

5 (8) A statement regarding the progress of the small
6 business in creating or preserving its requisite number of
7 employment opportunities.

8 (9) Any other information or documentation required by
9 the department.

10 (g) Penalty.--

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

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

19 (3) The amount of the 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 department may by foreclosure take title
24 to a capital development project which it financed if
25 acquisition is necessary to protect a loan made under this
26 section. The department shall pay all costs arising out of the
27 foreclosure and acquisition from moneys held in the fund. The
28 department may, in order to minimize financial losses and
29 sustain employment, lease the capital development project. The
30 department may withdraw moneys from the fund to purchase first

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

7 § 2308. Loans in distressed communities.

8 (a) Application.--A small business located in a distressed
9 community may submit an application and any applicable
10 application fee to a community development institution
11 requesting a loan for certain costs of a capital development
12 project. The application shall be on the form required by the
13 department and shall include or demonstrate all of the
14 following:

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

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

19 (3) A statement of the amount of loan assistance sought.

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

22 (5) A financial commitment from a responsible source for
23 the cost of the capital development project in excess of the
24 amount requested.

25 (6) Any other information required by the department.

26 (b) Community development institution review.--

27 (1) Upon receipt of a completed application, a community
28 development institution shall investigate and determine all
29 of the following:

30 (i) If the applicant is a small business which is

1 engaged in business-to-public service or in the
2 mercantile, commercial or point-of-sale retail business
3 sectors in accordance with conditions or criteria
4 established by the department.

5 (ii) If the project is a capital development
6 project.

7 (iii) If the applicant has demonstrated a direct
8 impact on the community in which the capital development
9 project is or will be located, on residents of that
10 community or on the local and/or regional economy. The
11 department shall establish criteria that will assist in
12 making this demonstration.

13 (iv) Number of employment opportunities to be
14 created or preserved by the proposed capital development
15 project.

16 (v) If the applicant complied with all other
17 criteria established by the department.

18 (2) Upon being satisfied that all requirements have been
19 met, the community development institution shall recommend
20 the applicant to the department and forward the application
21 with all supporting documentation to the department for its
22 review and approval.

23 (c) Department review.--

24 (1) Upon receipt of a recommendation and a completed
25 application, the department shall investigate and determine
26 all of the following:

27 (i) The ability of the applicant to meet and satisfy
28 the debt service as it becomes due and payable. In
29 reviewing repayment obligations, loans shall not be
30 approved on the basis of direct financial return on

1 investment and shall not be held to the loan loss
2 standards of private commercial lenders. Loans shall be
3 reviewed for the purpose of establishing a strong
4 economic base and promoting entrepreneurial activity
5 within the distressed community.

6 (ii) The existence and sufficiency of collateral for
7 the loan.

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

11 (2) If the department is satisfied that all requirements
12 have been met, the department may approve the loan request in
13 an amount not to exceed [~~\$200,000 or 50%~~] \$250,000 or 75% of
14 the total capital development project costs, whichever is
15 less. For the purpose of this paragraph, capital development
16 project costs, except the costs related to working capital,
17 incurred during the [~~12-month~~] 18-month period prior to the
18 date of submission of the application to the department shall
19 be considered part of the total capital development project
20 costs.

21 (3) The department shall notify the community
22 development institution and applicant of its decision.

23 (d) Approvals.--For applications which are approved, the
24 department shall draw an advance equal to the principal amount
25 of the loan from the fund and, prior to providing loan funds to
26 the applicant, the department shall require the applicant to
27 execute a note and to enter into a loan agreement. In addition
28 to the requirements of subsection (e), the loan agreement shall
29 include a provision requiring the recipient to use the loan
30 proceeds to pay the costs of the capital development project.

1 The department may impose other terms and conditions on the
2 recipient if the department determines they are in the best
3 interests of this Commonwealth, including a provision requiring
4 collateral for any penalty imposed under subsection (g).

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

7 (1) State any collateral securing the loan. The
8 department may use its best judgment to identify and secure
9 collateral.

10 (2) State the repayment period which may be flexible.

11 (3) State the interest rate which may not be less than
12 [2%] 1.5% nor more than [5%] 4.5% for the term of the loan.

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

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

19 (g) Penalty.--

20 (1) Except as provided in paragraph (2), the department
21 shall impose a penalty upon a recipient if the recipient
22 fails to preserve the number of employment opportunities
23 specified in its approved application.

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

28 (3) The amount of any penalty imposed under paragraph
29 (1) shall be equal to an increase in the interest rate to
30 [2%] 2.5% greater than the current prime interest rate for

1 the remainder of the loan.

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

16 § 2309. Pollution prevention assistance loans.

17 (a) Application.--A small business may submit an application
18 and any application fee to a pollution prevention assistance
19 agency requesting a loan for a pollution prevention
20 infrastructure. The application shall be on the form required by
21 the department and shall include or demonstrate all of the
22 following:

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

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

25 (3) A statement of the pollution prevention
26 infrastructure, including a detailed statement of the cost of
27 the infrastructure.

28 (4) A financial commitment from a responsible source for
29 the cost of the pollution prevention infrastructure in excess
30 of the amount requested.

1 (5) Any other information required by the department.

2 (b) Pollution prevention assistance agency review.--

3 (1) Upon receipt of a completed application, a pollution
4 prevention assistance agency shall investigate and determine
5 all of the following:

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

7 (ii) If the project is for pollution prevention
8 infrastructure.

9 (iii) If the applicant complied with all other
10 criteria established by the department.

11 (2) Upon being satisfied that all requirements have been
12 met, the pollution prevention assistance agency shall
13 recommend the applicant to the department and forward the
14 application with all supporting documentation to the
15 department for its review and approval.

16 (c) Department review.--

17 (1) Upon receipt of a recommendation and a completed
18 application, the department shall investigate and determine
19 all of the following:

20 (i) If the pollution prevention infrastructure
21 demonstrates a substantial likelihood of preventing or
22 reducing pollution. The Department of Environmental
23 Protection shall assist the department in reviewing the
24 applications and provide technical assistance.

25 (ii) The ability of the applicant to meet and
26 satisfy the debt service as it becomes due and payable.
27 In reviewing repayment obligations, loans shall not be
28 approved on the basis of direct financial return on
29 investment and shall not be held to the loan loss
30 standards of private commercial lenders. Loans shall be

1 reviewed for the purpose of reducing pollution through
2 source reduction technologies or processes.

3 (iii) The existence and sufficiency of collateral
4 for the loan.

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

8 (2) If the department is satisfied that all requirements
9 have been met, the department may approve the loan request. A
10 loan approved under this subsection may not exceed the lesser
11 of:

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

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

14 (3) The department shall notify the pollution prevention
15 assistance agency and applicant of its decision.

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

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

1 (1) State the collateral securing the loan. All loans
2 shall be secured by lien positions on collateral at the
3 highest level of priority as may be determined by the
4 department.

5 (2) State the repayment period which may not exceed [10]
6 15 years.

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

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

10 (f) Loan administration.--A loan made under this section
11 shall be administered in accordance with departmental policies
12 and procedures.

13 (g) Penalty.--

14 (1) Except as provided in paragraph (2), the department
15 shall impose a penalty upon a recipient if the recipient
16 fails to carry out the pollution prevention infrastructure
17 project as specified in its approved application.

18 (2) The department may waive the penalty required by
19 paragraph (1) if the department determines that the failure
20 was due to circumstances outside the control of the
21 recipient.

22 (3) The amount of any penalty imposed under paragraph
23 (1) shall be equal to an increase in the interest rate to
24 [2%] 3% greater than the current prime interest rate for the
25 remainder of the loan.

26 (h) Defaults.--The department may take title by foreclosure
27 to a pollution prevention infrastructure which it financed if
28 acquisition is necessary to protect a loan made under this
29 section. The department shall pay all costs arising out of the
30 foreclosure and acquisition from money held in the Pollution

1 Prevention Assistance Account. The department may, in order to
2 minimize financial losses and sustain employment, lease the
3 pollution prevention infrastructure. The department may withdraw
4 money from the Pollution Prevention Assistance Account to
5 purchase first mortgages and to make payments on first mortgages
6 on any pollution prevention infrastructure which it financed if
7 the purchase or payment is necessary to protect a loan made
8 under this section. The department may sell, transfer, convey
9 and assign the first mortgages and shall deposit any money
10 derived from the sale of any first mortgages in the Pollution
11 Prevention Assistance Account.

12 § 2310. Export financing loans.

13 (a) Application.--A person may submit an application and any
14 applicable application fee to the department or its area loan
15 organization requesting a loan for certain costs of a capital
16 development project which will be used in export activities. The
17 application must be on the form required by the department and
18 must include or demonstrate all of the following:

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

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

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

23 (4) A financial commitment from a responsible source for
24 any cost of the capital development project in excess of the
25 amount requested.

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

29 (6) Any other information required by the department.

30 (b) Review.--Upon receipt of a completed application, the

1 department shall investigate and determine all of the following:

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

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

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

6 (4) The existence and sufficiency of collateral for the
7 loan.

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

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

13 (7) If the applicant complied with all other criteria
14 established by the department.

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

1 Commonwealth, including any of the following:

2 (1) A provision requiring collateral for any penalty
3 imposed under subsection (f).

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

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

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

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

13 (1) State the collateral securing the loan. All loans
14 shall be secured by lien positions on collateral at the
15 highest level of priority as may be determined by the
16 department.

17 (2) State the repayment period as determined by the
18 department.

19 (3) State the interest rate as determined by the
20 department.

21 (e) Loan administration.--A loan made under this section
22 shall be administered in accordance with departmental policies
23 and procedures.

24 (f) Penalty.--

25 (1) Except as provided in paragraph (2), the department
26 shall impose a penalty upon a recipient if the recipient
27 fails to carry out the export activities specified in its
28 approved application.

29 (2) The department may waive the penalty required by
30 paragraph (1) if the department 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 2%
5 greater than the current prime interest rate for the
6 remainder of the loan.

7 (g) Defaults.--The department may, by foreclosure, take
8 title to a capital development project which it financed if
9 acquisition is necessary to protect a loan made under this
10 section. The department shall pay all costs arising out of the
11 foreclosure and acquisition from money held in the fund or a
12 special account authorized by section 2304(c)(2). The department
13 may, in order to minimize financial losses and sustain
14 employment, lease the capital development project. The
15 department may withdraw money from the fund or a special account
16 authorized by section 2304(c)(2) to purchase first mortgages and
17 to make payments on first mortgages on any capital development
18 project which it financed if purchase or payment is necessary to
19 protect a loan made under this section. The department may sell,
20 transfer, convey and assign the first mortgages and shall
21 deposit any money derived from the sale of any first mortgages
22 in the fund or a special account authorized by section 2304(c)
23 (2).

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