

1742

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. ESPAILLAT, PERKINS -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the New York state urban development corporation act, in relation to the small business regional revolving loan trust fund and the small business regional revolving loan program

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Statement of legislative intent. The legislature hereby
2 finds and declares that small businesses are the economic backbone of
3 the state and the source of a majority of new jobs. The legislature
4 further finds that such businesses often have difficulty obtaining small
5 amounts of capital from traditional banking organizations that is neces-
6 sary to start-up, improve, or expand operations. State assistance in the
7 form of loans to meet such capital gaps would enable the formation and
8 expansion of small businesses across the state and, thus, provide job
9 opportunities to the state's citizens. The legislature further finds
10 that the existing regional revolving loan program of the state urban
11 development corporation demonstrated that it is more efficient and
12 effective to provide such loans through regional not-for-profit corpo-
13 rations that are knowledgeable about local businesses and economic
14 conditions. Therefore, it is the intent of the legislature to improve
15 job opportunities in the state by revitalizing the urban development
16 corporation's regional revolving loan program and re-naming it the small
17 business regional revolving loan program.

18 S 2. The New York state urban development corporation created by chap-
19 ter 174 of the laws of 1968 is hereby directed to audit, pursuant to
20 subdivision 19 of section 16-a of section 1 of the urban development
21 corporation act, each existing regional corporation administering a
22 small business regional revolving loan fund and to either recertify such
23 regional corporation or decertify such regional corporation and competi-
24 tively select a successor corporation to administer the small business
25 regional revolving loan fund. In the case of regions that do not have a

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD02587-01-3

1 regional corporation administering a small business regional revolving
2 loan fund or that have a decertified regional corporation, the urban
3 development corporation shall issue a request for proposals, pursuant to
4 the provisions of section 16-a of section 1 of the urban development
5 corporation act, to administer small business regional revolving loan
6 funds. The corporation shall select from the proposals received the most
7 qualified applicant in each region pursuant to subdivisions 4, 5, and 6
8 of such section 16-a. If there is no applicant or no qualified applicant
9 in a region of the state, that region shall not participate in the small
10 business regional revolving loan fund program. The corporation, from
11 money available for this purpose, shall allocate funds to each regional
12 corporation pursuant to subdivision 1 of such section 16-a.

13 S 3. Section 16-a of section 1 of chapter 174 of the laws of 1968,
14 constituting the New York state urban development corporation act, as
15 amended by chapter 477 of the laws of 2002, subdivisions 20 and 21 as
16 amended by chapter 524 of the laws of 2005, is amended to read as
17 follows:

18 S 16-a. [Regional] SMALL BUSINESS REGIONAL revolving loan program. (1)
19 The corporation shall establish a fund to be known as the "SMALL BUSI-
20 NESS regional revolving loan trust fund" and shall pay into such fund
21 any monies made available to the corporation for such fund from any
22 source. The monies held in or credited to the fund shall be expended
23 solely for the purposes set forth in this section. The corporation shall
24 not commingle the monies of such fund with any other monies of the
25 corporation or any monies held in trust by the corporation.

26 (2) The corporation shall allocate any monies made available for such
27 fund for the purpose of making grants to regional corporations. The
28 grants shall be allocated as follows:

29 (a) fifty percent divided equally among the regions;

30 (b) fifty percent according to a formula weighted in favor of those
31 regions with the greatest levels of economic distress as determined by
32 poverty rates, number of persons receiving public assistance, unemploy-
33 ment rates, rate of employment decline and such other indicators of
34 economic distress as the corporation deems appropriate; and

35 (c) in the event a regional corporation advises the corporation that
36 it does not require all or a portion of the funds to be distributed
37 pursuant to this subdivision, such funds shall be re-distributed by the
38 corporation equally among the other regional corporations.

39 (3) In accordance with the rules and regulations of the corporation,
40 each regional corporation shall establish two special accounts for
41 monies received by the regional corporation pursuant to the provisions
42 of this section. The grant monies received from the corporation, earn-
43 ings on such monies, and any principal repayments shall be deposited in
44 a loan fund account; any interest earned by the regional corporation on
45 loans will be deposited in a separate interest repayment account. A
46 regional corporation shall be authorized to provide financing assistance
47 to eligible projects. Any interest earned from its loans may be used by
48 a regional corporation for the cost of administering the programs
49 authorized by this section.

50 (4) Regional corporations shall be selected by the corporation from
51 among eligible applicants to administer a SMALL BUSINESS regional
52 revolving loan program. An eligible applicant shall:

53 (a) represent at least two entire contiguous counties;

54 (b) have available to it staff with sufficient expertise to analyze
55 applications for financial assistance, to regularly monitor financial

1 assistance to clients, and have made arrangements to provide management
2 or technical assistance to clients;

3 (c) have an effective plan to market its services to small businesses
4 through such entities as chambers of commerce, industry trade associ-
5 ations, banks, local development corporations, community based organiza-
6 tions and industrial development agencies; and

7 (d) have established a loan committee composed of five or more persons
8 experienced in commercial lending or in the operation of a for-profit
9 business and a staff person of the regional office of the department of
10 economic development. Such loan committee shall review every application
11 to the regional corporation for financial assistance pursuant to this
12 section, shall determine the feasibility of the transaction proposed in
13 the application and shall recommend to the board of directors or other
14 governing body of the regional corporation such action as the committee
15 deems appropriate.

16 (5) Applications to the corporation for certification or recertif-
17 ication as a regional corporation shall:

18 (a) describe the applicant corporation, including its organization,
19 membership, loan committee, staff, and sources of other funds, if any;

20 (b) identify the geographic region to be served;

21 (c) explain the methods and criteria to be used in determining firms
22 eligible for financial assistance from the SMALL BUSINESS regional
23 revolving loan program;

24 (d) describe the means for coordinating financial assistance available
25 from the SMALL BUSINESS regional revolving loan program with financial
26 assistance available from other public funding sources within the region
27 and how such program will be used to leverage private financing for
28 projects;

29 [(e) at any time, the corporation may consider proposals to reconfig-
30 ure geographic areas served by regional corporations;] and

31 [(f)] (E) contain such other information as the corporation deems
32 appropriate.

33 (6) The corporation shall select, from among eligible applicants,
34 regional corporations to administer revolving loan programs, on the
35 basis of:

36 (a) the ability of the regional corporation to administer the finan-
37 cial assistance programs authorized under this section;

38 (b) the extent of coordination with other publicly supported financial
39 assistance programs available within the region represented by the
40 regional corporation;

41 (c) the degree of public and private support within the region for the
42 applicant regional corporation; and

43 (d) the ability of the regional corporation to provide financial and
44 other assistance to businesses located in distressed areas within the
45 region.

46 (6-a) The corporation shall, every five years, recertify that each
47 regional corporation has complied with the terms and conditions of this
48 section. In the event a regional corporation is not recertified, or its
49 certification is withdrawn pursuant to subdivision nineteen of this
50 section, then the corporation shall give written notice to such regional
51 corporation which shall thereafter neither make new loans nor undertake
52 new obligations except upon written approval of the corporation. The
53 corporation may thereafter certify another regional corporation in the
54 manner provided in this section for the selection of regional corpo-
55 rations. Upon the certification of a successor regional corporation, all
56 remaining loan funds, records and accounts of the regional corporation

1 not recertified shall be transferred to the corporation and the regional
2 corporation not recertified shall cease to function pursuant to this
3 section. The corporation shall transfer returned funds to a successor
4 regional corporation, or in the event no successor regional corporation
5 is formed, equally to other existing regional corporations.

6 (7) A regional corporation certified by the corporation shall use the
7 funds received from the corporation, subject to the terms, conditions
8 and restrictions set forth in this section, to provide financial assist-
9 ance to eligible businesses as defined in subdivision seventeen of
10 section three of this act, for projects that demonstrate a substantial
11 likelihood of providing increases in net new permanent jobs or retaining
12 jobs in businesses that need such financial assistance to remain viable.
13 THE REGIONAL CORPORATION CERTIFIED BY THE CORPORATION SHALL ALSO USE THE
14 FUNDS RECEIVED FROM THE CORPORATION, SUBJECT TO THE TERMS, CONDITIONS,
15 AND RESTRICTIONS SET FORTH IN THIS SECTION, TO PROVIDE FINANCIAL ASSIST-
16 ANCE TO MICRO-ENTERPRISES, DEFINED AS ANY COMMERCIAL BUSINESS WITH FIVE
17 OR FEWER EMPLOYEES, ONE OR MORE OF WHOM IS THE OWNER.

18 (8) The decision to approve or reject an application for financial
19 assistance pursuant to the provisions of this section shall be made by a
20 majority of the directors of the regional corporation, and such decision
21 shall be final. No member of the board or other governing body of a
22 regional corporation shall participate in a decision on a project appli-
23 cation when such member is a party to or has a financial interest in
24 such project. Any member who cannot participate in a decision on a
25 project application for such reason shall not be counted as a member of
26 the board or other governing body for purposes of determining the number
27 of members required for a majority vote on such application.

28 (9) No employee or officer of any regional corporation shall be a
29 party to or have any financial interest in any project that receives
30 financial assistance pursuant to this section.

31 (10) A regional corporation, in approving applications for financial
32 assistance, shall give priority to projects:

33 (a) that will provide increases in net new permanent jobs;

34 (b) located in economically distressed areas as defined by the corpo-
35 ration or employing persons who live in such areas;

36 (c) of minority or women-owned enterprises or enterprises owned by
37 dislocated workers, such workers as defined in the Workforce Investment
38 Act (P.L. 105-220); and

39 (d) of businesses in the early stages of development that have been
40 denied access to credit.

41 (11) The funds allocated to each regional corporation pursuant to this
42 section may be used to guarantee the repayment of a working capital loan
43 provided by a banking organization to finance an eligible project.
44 Guarantees may be provided for up to ninety percent of the required
45 total project financing, provided that no more than one hundred thousand
46 dollars may be guaranteed for any project. Guarantees may be made for
47 the following types of financing: short and medium term loans for work-
48 ing capital, revolving lines of credit, and seasonal inventory and
49 accounts receivable loans. Guarantees may be made for up to ninety
50 percent of the required total financing up to a maximum of one hundred
51 fifty thousand dollars for interim financing where another lender or
52 guarantor will provide permanent financing within one hundred eighty
53 days. In no event may a loan guarantee be for a term longer than five
54 years. Any loan made by a banking organization that is guaranteed pursu-
55 ant to this subdivision shall be secured by a security agreement, chat-
56 tel paper, loan agreement, or such other instruments or documents deemed

1 necessary or convenient by the regional corporation to secure the loan.
2 Any guarantee made pursuant to this subdivision shall be backed by a
3 minimum reserve within the account established by each regional corpo-
4 ration of at least twenty-five percent of the amount guaranteed that is
5 outstanding.

6 (11-a) A regional corporation, in addition to receiving funds as
7 provided in this section, may also apply for and accept funds from any
8 other source for the purpose of furthering its goals and objectives.
9 Such funds may be used in the same manner as funds received from the
10 corporation to carry out the purposes of this section.

11 (12) The funds of each regional corporation derived pursuant to this
12 section may be used to provide loans for working capital for eligible
13 projects; provided that the amount of the loan does not exceed ninety
14 percent of the total project cost, or one hundred thousand dollars,
15 whichever is less. The interest rate and the terms [on] OF such loans
16 shall be determined by the regional corporation, but in no event shall
17 the interest rate be less than [five percent] THE FEDERAL DISCOUNT RATE.
18 The term of any loan shall not exceed five years. All loans shall be
19 secured by lien positions on collateral at the highest level of priority
20 that can accommodate the borrower's ability to raise sufficient debt and
21 equity capital for the project.

22 (13) A regional corporation shall not provide any financial assistance
23 authorized by this section unless the following conditions are met:

24 (a) the applicant has demonstrated that there is little prospect of
25 obtaining the project financing requested from other public sources of
26 funding within the region, including local revolving loan funds, and
27 that there is little prospect of obtaining adequate project financing
28 from private sources of capital, or in the case of a loan guarantee,
29 that there is little prospect of obtaining project financing without the
30 guarantee; except that in the case of local revolving loan funds, finan-
31 cial assistance from the SMALL BUSINESS regional revolving loan fund
32 account may be provided for a project in conjunction with financial
33 assistance from a local revolving loan fund, provided that assistance
34 from the SMALL BUSINESS regional revolving loan fund is no greater than
35 that provided by the local revolving loan fund, and that a project qual-
36 ifying for financial assistance available from a local revolving loan
37 fund is not denied such assistance;

38 (b) the applicant has a minimum equity interest of at least ten
39 percent in the business or project;

40 (c) there is a reasonable prospect of repayment;

41 (d) the project is located in the region represented by the regional
42 corporation;

43 (e) the project will comply with any applicable environmental rules or
44 regulations;

45 (f) the applicant has certified that it will not discriminate against
46 any employee or any applicant for employment because of race, religion,
47 color, national origin, sex, or age;

48 (g) a staff member or a representative of the regional corporation
49 acting in an official capacity has personally visited the project site
50 and/or the applicant's place of business; and

51 (h) financial commitments for the project have been obtained from
52 other public and private sources.

53 (14) Grants made by the corporation pursuant to this section shall not
54 be made available for:

55 (a) projects that would result in the relocation of any business oper-
56 ation from one municipality within the state to another, except under

one of the following conditions: (i) when a business is relocating within a municipality with a population of at least one million where the governing body of such municipality approves such relocation; or (ii) the regional corporation notifies each municipality from which such business operation will be relocated and each municipality agrees to such relocation;

(b) projects of newspapers, broadcasting or other news media; medical facilities, libraries, community or civic centers; or public infrastructure improvements;

(c) refinancing any portion of the total project cost or other existing loans or debts of an applicant, except for the purpose of transferring to the employees or to other local interests ownership of a company that would otherwise depart from or cease or substantially reduce operations in the state AND EXCEPT WHEN SUCH REFINANCING IS REQUIRED TO ENABLE A VIABLE BUSINESS TO MAINTAIN OR EXPAND ITS OPERATIONS IN THE STATE;

(d) providing funds, directly or indirectly, for payment, distribution, or as a loan, to owners, partners or shareholders of the applicant enterprise, except as ordinary income for services rendered; and

(e) retail projects, except where the regional corporation finds there will be an increase in net new permanent jobs.

(15) A regional corporation may charge application, commitment and loan guarantee fees pursuant to a schedule of fees adopted by the regional corporation and approved by the corporation.

(16) The regional corporations shall submit annual reports for the previous fiscal year to the corporation describing the financial assistance provided pursuant to this section, including: the number of projects assisted; the amount and type of assistance provided; a description of the projects; the number of jobs created or retained; the status of outstanding loans, guarantees, earnings and account balances; and such other information as the corporation may require.

(17) The corporation shall, assisted by the commissioner of economic development and in consultation with the department of economic development, promulgate rules and regulations in accordance with the state administrative procedure act setting forth procedures to be followed by, and the responsibilities and obligations of, regional corporations and the corporation. Such rules and regulations shall be consistent with the program plan required by subdivision nineteen of section one hundred of the economic development law.

(18) For any positions opened as a result of assistance provided in this section, businesses so assisted shall first consider unemployed or low income individuals eligible to participate in programs funded through the Workforce Investment Act (P.L. 105-220) who shall be referred to the business by local workforce investment boards created pursuant to such act or by the job service division of the department of labor.

(19) The corporation shall annually conduct an audit of each regional corporation to ensure conformity of all aspects of program administration and of financial assistance transactions with the substantive and procedural provisions of this section. In the event that the corporation finds instances of substantive noncompliance by a regional corporation with any of the provisions of this section and such instances were, or should have been, known to be in noncompliance, the regional corporation shall return, within thirty days, upon demand by the corporation, all uncommitted grant funds on hand and provide an accounting of the loans currently outstanding.

1 The corporation may withdraw a regional corporation's certification:

2 (a) when a member of a board of directors or other governing body, an
3 officer or an employee of said regional corporation is party to or has
4 financial interests in loan projects;

5 (b) when said regional corporation fails to comply with the require-
6 ments for project loans pursuant to this section; or

7 (c) when a regional corporation makes no loans within the previous
8 fiscal year and there is more than one hundred thousand dollars remain-
9 ing in its loan fund account.

10 The corporation shall transfer funds returned from a decertified
11 regional corporation to a successor regional corporation, or, if there
12 be none, distribute such funds equally among other existing regional
13 corporations. Outstanding loans and other obligations payable to such a
14 decertified regional corporation shall be assigned to its successor
15 regional corporation, or to the corporation or an agent designated by
16 the corporation upon such terms and conditions as the corporation shall
17 determine.

18 (20) [Reporting.] The corporation shall, on or before October 1, 1988
19 and on or before each October first thereafter, submit a report to the
20 governor and the legislature on the operations and accomplishments of
21 the SMALL BUSINESS regional revolving loan program. Such report shall
22 include a summary of the information contained in the reports submitted
23 pursuant to subdivision sixteen of this section and of the results of
24 the audits performed by the corporation pursuant to subdivision nineteen
25 of this section, and shall set forth the status of the SMALL BUSINESS
26 regional revolving loan program for the previous fiscal year, including
27 grants to the regional corporations, earnings and account balances as
28 reported to the corporation. The report to be submitted on October 1,
29 2005 and on or before each October first thereafter shall be consol-
30 idated with the annual program report of the corporation required under
31 the provisions of subdivision (b) of section thirty of this act, as
32 amended.

33 (21) [Evaluation.] (a) The corporation shall submit to the director of
34 the division of the budget, the chairperson of the senate finance
35 committee, and the chairperson of the assembly ways and means committee
36 an evaluation of this program prepared by an entity independent of the
37 corporation. Such evaluation shall be submitted by September 1, 2005 and
38 by September first every four years thereafter.

39 (b) Between evaluation due dates, the corporation shall maintain the
40 necessary records and data required to satisfy such evaluation require-
41 ments and to satisfy information requests received from the director of
42 the budget, the chairperson of the senate finance committee and the
43 chairperson of the assembly ways and means committee between such evalu-
44 ation due dates.

45 (22) The corporation shall recertify existing regional corporations
46 or, in the event a regional corporation's certification has been with-
47 drawn, seek successor corporations among eligible applicants after April
48 first, two thousand two.

49 S 4. Paragraph (f) of subdivision 2 of section 16-c of section 1 of
50 chapter 174 of the laws of 1968, constituting the New York state urban
51 development corporation act, as added by chapter 169 of the laws of
52 1994, is amended to read as follows:

53 (f) The provisions of subdivisions eight, nine, and fourteen through
54 nineteen of section sixteen-a of this act pertaining to the SMALL BUSI-
55 NESS regional revolving [loans] LOAN trust fund shall also be applicable
56 to the minority and women revolving loan trust fund, provided that:

1 where the term "regional corporation" appears therein it shall be inter-
2 preted to mean an entity selected to administer a minority and women
3 revolving loan trust fund account, and "SMALL BUSINESS regional revolv-
4 ing [loans] LOAN trust fund" shall mean a minority and women revolving
5 loan trust fund, and where the term "this section" appears therein it
6 shall mean this section sixteen-c.

7 S 5. Paragraph (h) of subdivision 1 of section 16-e of section 1 of
8 chapter 174 of the laws of 1968, constituting the New York state urban
9 development corporation act, as added by chapter 169 of the laws of
10 1994, is amended to read as follows:

11 (h) "Revolving loan fund account grants" shall include: (i) grants to
12 provide the local match for federally funded community-based loan funds;
13 (ii) grants to capitalize and recapitalize SMALL BUSINESS regional
14 revolving loan trust fund accounts pursuant to section sixteen-a of this
15 act; and (iii) grants to recapitalize minority and women revolving loan
16 trust fund accounts established pursuant to section sixteen-c of this
17 act.

18 S 6. Subdivision 13 of section 16-e of section 1 of chapter 174 of the
19 laws of 1968, constituting the New York state urban development corpo-
20 ration act, as added by chapter 169 of the laws of 1994, is amended to
21 read as follows:

22 (13) Regional loan fund account grants. Assistance from this program
23 may be provided for grants of up to five hundred thousand dollars to
24 capitalize, and up to two hundred thousand dollars to recapitalize,
25 SMALL BUSINESS regional revolving loan trust fund accounts established
26 pursuant to section sixteen-a of this act and up to two hundred thousand
27 dollars to recapitalize minority and women revolving loan trust fund
28 accounts established pursuant to section sixteen-c of this act; and up
29 to two hundred thousand dollars to provide the local match for appropri-
30 ately federally-financed community-based loan funds.

31 S 7. The opening paragraph of paragraph (b-1) of subdivision 6 of
32 section 16-l of section 1 of chapter 174 of the laws of 1968, constitut-
33 ing the New York state urban development corporation act, as added by
34 chapter 603 of the laws of 2003, is amended to read as follows:

35 The corporation is authorized, within available appropriations in the
36 empire state economic development fund established pursuant to section
37 16-m of this act, to provide financial assistance in the form of loans,
38 loan guarantees, working capital loans, and interest subsidy grants to
39 subsidize loans from federally chartered instrumentalities and state and
40 private lending institutions, including agricultural cooperative corpo-
41 rations, provided that such assistance to state lending institutions
42 shall not exceed one-third of the total project cost or four hundred
43 thousand dollars, whichever is less, to agricultural enterprises seeking
44 to implement the projects listed in this paragraph. Funds for such
45 loans, grants, subsidies, or any other assistance specified pursuant to
46 this act may come from funds derived from the financial assistance for
47 small and medium-sized business assistance projects established pursuant
48 to section 9-a of this act, the SMALL BUSINESS regional revolving loan
49 trust fund established pursuant to section 16-a of this act, the
50 regional economic development partnership program established pursuant
51 to section 16-e of this act, the empire state economic development fund
52 established pursuant to section 16-m of this act, or from any other
53 funds, programs, or projects administered by the corporation or by other
54 state appropriations.

55 S 8. This act shall take effect immediately.