S T A T E O F N E W Y O R K

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Introduced by M. of A. WEPRIN, CANESTRARI, AUBRY, CHRISTENSEN, COOK, PERRY, SCHIMMINGER, JEFFRIES, PEOPLES, PRETLOW, RAMOS, KOON, COLTON -- Multi-Sponsored by -- M. of A. ROBINSON, WRIGHT -- read once and referred to the Committee on Small Business -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

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:

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

S 2. The New York state urban development corporation created by chapter 174 of the laws of 1968 is hereby directed to audit, pursuant to

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

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subdivision 19 of section 16-a of section 1 of the urban development corporation act, each existing regional corporation administering a small business regional revolving loan fund and to either recertify such regional corporation or decertify such regional corporation and competitively select a successor corporation to administer the small business regional revolving loan fund. In the case of regions that do not have a regional corporation administering a small business regional revolving loan fund or that have a decertified regional corporation, the urban development corporation shall issue a request for proposals, pursuant to the provisions of section 16-a of section 1 of the urban development corporation act, to administer small business regional revolving loan funds. The corporation shall select from the proposals received the most qualified applicant in each region pursuant to subdivisions 4, 5, and 6 of such section 16-a. If there is no applicant or no qualified applicant in a region of the state, that region shall not participate in the small business regional revolving loan fund program. The corporation, from money available for this purpose, shall allocate funds to each regional corporation pursuant to subdivision 1 of such section 16-a.

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

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

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

(a) fifty percent divided equally among the regions;

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

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

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

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

(a) represent at least two entire contiguous counties;

(b) have available to it staff with sufficient expertise to analyze applications for financial assistance, to regularly monitor financial assistance to clients, and have made arrangements to provide management or technical assistance to clients;

(c) have an effective plan to market its services to small businesses through such entities as chambers of commerce, industry trade associations, banks, local development corporations, community based organizations and industrial development agencies; and

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

(5) Applications to the corporation for certification or recertification as a regional corporation shall:

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

(b) identify the geographic region to be served;

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

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

[(e) at any time, the corporation may consider proposals to reconfigure geographic areas served by regional corporations;] and

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

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

(a) the ability of the regional corporation to administer the financial assistance programs authorized under this section;

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

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

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

(6-a) The corporation shall, every five years, recertify that each regional corporation has complied with the terms and conditions of this section. In the event a regional corporation is not recertified, or its certification is withdrawn pursuant to subdivision nineteen of this section, then the corporation shall give written notice to such regional

corporation which shall thereafter neither make new loans nor undertake new obligations except upon written approval of the corporation. The corporation may thereafter certify another regional corporation in the manner provided in this section for the selection of regional corporations. Upon the certification of a successor regional corporation, all remaining loan funds, records and accounts of the regional corporation not recertified shall be transferred to the corporation and the regional corporation not recertified shall cease to function pursuant to this section. The corporation shall transfer returned funds to a successor regional corporation, or in the event no successor regional corporation is formed, equally to other existing regional corporations.

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

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

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

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

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

(b) located in economically distressed areas as defined by the corporation or employing persons who live in such areas;

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

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

(11) The funds allocated to each regional corporation pursuant to this section may be used to guarantee the repayment of a working capital loan provided by a banking organization to finance an eligible project. Guarantees may be provided for up to ninety percent of the required total project financing, provided that no more than one hundred thousand dollars may be guaranteed for any project. Guarantees may be made for the following types of financing: short and medium term loans for working capital, revolving lines of credit, and seasonal inventory and accounts receivable loans. Guarantees may be made for up to ninety percent of the required total financing up to a maximum of one hundred

fifty thousand dollars for interim financing where another lender or guarantor will provide permanent financing within one hundred eighty days. In no event may a loan guarantee be for a term longer than five years. Any loan made by a banking organization that is guaranteed pursuant to this subdivision shall be secured by a security agreement, chattel paper, loan agreement, or such other instruments or documents deemed necessary or convenient by the regional corporation to secure the loan. Any guarantee made pursuant to this subdivision shall be backed by a minimum reserve within the account established by each regional corporation of at least twenty-five percent of the amount guaranteed that is outstanding.

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

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

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

(a) the applicant has demonstrated that there is little prospect of obtaining the project financing requested from other public sources of funding within the region, including local revolving loan funds, and that there is little prospect of obtaining adequate project financing from private sources of capital, or in the case of a loan guarantee, that there is little prospect of obtaining project financing without the guarantee; except that in the case of local revolving loan funds, financial assistance from the SMALL BUSINESS regional revolving loan fund account may be provided for a project in conjunction with financial assistance from a local revolving loan fund, provided that assistance from the SMALL BUSINESS regional revolving loan fund is no greater than that provided by the local revolving loan fund, and that a project qualifying for financial assistance available from a local revolving loan fund is not denied such assistance;

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

(c) there is a reasonable prospect of repayment;

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

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

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

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

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

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

(a) projects that would result in the relocation of any business operation 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 corpo-

ration 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.

The corporation may withdraw a regional corporation's certification:

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

(b) when said regional corporation fails to comply with the requirements for project loans pursuant to this section; or

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

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

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

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

(b) Between evaluation due dates, the corporation shall maintain the necessary records and data required to satisfy such evaluation requirements and to satisfy information requests received from the director of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee between such evaluation due dates.

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

S 4. Paragraph (f) of subdivision 2 of section 16-c of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban

development corporation act, as added by chapter 169 of the laws of 1994, is amended to read as follows:

(f) The provisions of subdivisions eight, nine, and fourteen through nineteen of section sixteen-a of this act pertaining to the SMALL BUSINESS regional revolving [loans] LOAN trust fund shall also be applicable to the minority and women revolving loan trust fund, provided that: where the term "regional corporation" appears therein it shall be interpreted to mean an entity selected to administer a minority and women revolving loan trust fund account, and "SMALL BUSINESS regional revolving [loans] LOAN trust fund" shall mean a minority and women revolving loan trust fund, and where the term "this section" appears therein it shall mean this section sixteen-c.

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

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

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

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

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

The corporation is authorized, within available appropriations in the empire state economic development fund established pursuant to section 16-m of this act, to provide financial assistance in the form of loans, loan guarantees, working capital loans, and interest subsidy grants to subsidize loans from federally chartered instrumentalities and state and private lending institutions, including agricultural cooperative corporations, provided that such assistance to state lending institutions shall not exceed one-third of the total project cost or four hundred thousand dollars, whichever is less, to agricultural enterprises seeking to implement the projects listed in this paragraph. Funds for such loans, grants, subsidies, or any other assistance specified pursuant to this act may come from funds derived from the financial assistance for small and medium-sized business assistance projects established pursuant to section 9-a of this act, the SMALL BUSINESS regional revolving loan trust fund established pursuant to section 16-a of this act, the regional economic development partnership program established pursuant

to section 16-e of this act, the empire state economic development fund established pursuant to section 16-m of this act, or from any other funds, programs, or projects administered by the corporation or by other state appropriations.

S 8. This act shall take effect immediately.