

1868

2011-2012 Regular Sessions

I N S E N A T E

January 13, 2011

Introduced by Sen. ESPAILLAT -- 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
26 regional corporation administering a small business regional revolving

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

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

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

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

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

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

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

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

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

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

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

53 (b) have available to it staff with sufficient expertise to analyze
54 applications for financial assistance, to regularly monitor financial
55 assistance to clients, and have made arrangements to provide management
56 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

1 section. The corporation shall transfer returned funds to a successor
2 regional corporation, or in the event no successor regional corporation
3 is formed, equally to other existing regional corporations.

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

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

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

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

- 31 (a) that will provide increases in net new permanent jobs;
- 32 (b) located in economically distressed areas as defined by the corpo-
33 ration or employing persons who live in such areas;
- 34 (c) of minority or women-owned enterprises or enterprises owned by
35 dislocated workers, such workers as defined in the Workforce Investment
36 Act (P.L. 105-220); and
- 37 (d) of businesses in the early stages of development that have been
38 denied access to credit.

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

1 minimum reserve within the account established by each regional corpo-
2 ration of at least twenty-five percent of the amount guaranteed that is
3 outstanding.

4 (11-a) A regional corporation, in addition to receiving funds as
5 provided in this section, may also apply for and accept funds from any
6 other source for the purpose of furthering its goals and objectives.
7 Such funds may be used in the same manner as funds received from the
8 corporation to carry out the purposes of this section.

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

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

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

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

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

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

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

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

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

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

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

53 (a) projects that would result in the relocation of any business oper-
54 ation from one municipality within the state to another, except under
55 one of the following conditions: (i) when a business is relocating
56 within a municipality with a population of at least one million where

1 the governing body of such municipality approves such relocation; or
2 (ii) the regional corporation notifies each municipality from which such
3 business operation will be relocated and each municipality agrees to
4 such relocation;

5 (b) projects of newspapers, broadcasting or other news media; medical
6 facilities, libraries, community or civic centers; or public infrastruc-
7 ture improvements;

8 (c) refinancing any portion of the total project cost or other exist-
9 ing loans or debts of an applicant, except for the purpose of trans-
10 ferring to the employees or to other local interests ownership of a
11 company that would otherwise depart from or cease or substantially
12 reduce operations in the state AND EXCEPT WHEN SUCH REFINANCING IS
13 REQUIRED TO ENABLE A VIABLE BUSINESS TO MAINTAIN OR EXPAND ITS OPER-
14 ATIONS IN THE STATE;

15 (d) providing funds, directly or indirectly, for payment, distrib-
16 ution, or as a loan, to owners, partners or shareholders of the appli-
17 cant enterprise, except as ordinary income for services rendered; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 S 8. This act shall take effect immediately.