STATE OF NEW YORK

S. 3489 A. 5049

2019-2020 Regular Sessions

SENATE - ASSEMBLY

February 7, 2019

IN SENATE -- Introduced by Sens. LAVALLE, KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

IN ASSEMBLY -- Introduced by M. of A. THIELE, BARRON -- read once and referred to the Committee on Small Business

AN ACT to amend the economic development law, the public authorities law and the New York state urban development corporation act, in relation to financial assistance to small businesses for the purpose of pollution prevention, control and compliance

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraphs l and m of subdivision 2 of section 137 of the economic development law, paragraph l as amended and paragraph m as added by chapter 594 of the laws of 1994, are amended and a new paragraph n is added to read as follows:

l. providing information to small business stationary sources on state-sponsored programs offering financial and technical assistance, and in locating sources of funding for compliance with the requirements of article nineteen of the environmental conservation law and the Act; [~~and~~]

m. establishing procedures for assuring the confidentiality of information received from small business stationary sources[~~.~~]**; and**

n. marketing the small business environmental fund established pursuant to section twelve hundred eighty-five-v of the public authorities law to small business stationary sources, assisting the New York state urban development corporation in the projection of demand for financial assistance pursuant to section sixteen-m of the New York state urban development corporation act.

§ 2. The public authorities law is amended by adding a new section 1285-v to read as follows:

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

LBD03178-01-9

§ 1285-v. Small business environmental fund. 1. The corporation shall undertake and provide assistance in support of a program to assist small businesses in leveraging capital from financial institutions to achieve pollution prevention and/or compliance with federal or state environmental laws.

2. There is hereby established in the custody of the corporation a special fund to be known as the small business environmental fund. Moneys in such fund shall be segregated from all other funds of or in the custody of the corporation subject to any rights of holders of corporation bonds or notes issued for the purposes of this section. Moneys in such fund shall only be used in accordance with the provisions of this section. The moneys in such fund shall be applied to or paid out for authorized purposes of such fund on the direction of the chairman of the corporation in accordance with subdivision four of this section, or such other person as the corporation shall authorize to make such direction.

3. Such fund shall consist of all of the following: (a) moneys appropriated by the state legislature for the purpose of such fund or otherwise transferred by the state for deposit therein by the comptroller as required by law; (b) payments of the loan origination fee authorized pursuant to subdivision six of this section; (c) investment earnings on amounts in such fund; (d) the proceeds of bonds or notes issued by the corporation for purposes of leveraging capital on behalf of small businesses seeking to achieve pollution prevention and/or comply with federal or state environmental laws; and (e) any other payments received from the federal government or other sources for the purposes of the fund.

4. (a) Moneys in such fund shall be applied by the corporation as a loan loss reserve fund, to provide credit enhancement to encourage financial institutions to make pollution prevention or compliance loans including such loans as may be necessary to purchase, lease, install or acquire pollution control equipment to small businesses.

(b) The corporation is hereby authorized to provide assistance in the form of a loan loss reserve fund for loans by financial institutions to small businesses that otherwise find it difficult to obtain bank financing for pollution prevention or compliance activities control. The corporation may use moneys in the fund to guarantee up to ninety percent of the outstanding principal of each loan to be made by a financial institution to a small business for pollution prevention or compliance activities, provided, however, that no loan by a financial institution pursuant to this section shall exceed five hundred thousand dollars.

5. (a) The corporation shall enter into agreements with financial institutions governing participation in the fund which shall include, but not be limited to, the terms of the payment of claims pursuant to subdivision seven of this section. Such agreements shall set forth any loan application fee to be charged by the financial institution to the applicant and the loan origination fee to be paid to the corporation for loans pursuant to this section. In entering into agreements with financial institutions, the corporation shall give priority to the execution of agreements which provide for the participation of a consortium of financial institutions serving an entire economic development region as defined in section two hundred thirty of the economic development law.

(b) The corporation shall also establish procedures and other requirements for small business participation. Such procedures shall include a simplified application form for small businesses seeking assistance. Such application shall require a demonstration by the applicant that difficulty in obtaining conventional bank financing for pollution

prevention or compliance activities in the purchase, lease, installation or acquisition of pollution control equipment impedes the ability of the applicant to achieve pollution prevention or comply with federal or state environmental laws. Such application shall also include such specific information as the corporation may require, with regard to the pollution prevention or compliance activities proposed, and the estimated cost of financing such activities.

(c) Within twenty-eight days of receipt of an application pursuant to this section, the corporation shall either approve or reject such application. The corporation shall approve an application pursuant to paragraph (b) of this subdivision based upon a determination that:

(1) the proposed pollution prevention or compliance activities will assist the small business in achieving pollution prevention and/or full compliance with federal or state environmental laws;

(2) a loan is required to finance the pollution prevention or compliance activities or to finance the purchase, lease, installment or acquisition of pollution control equipment;

(3) approval is not sought for an outstanding loan previously made by a financial institution to the small business; and

(4) no concurrent loan has been made to the small business pursuant to this section.

(d) In the approval of applications, the corporation shall give preference to those small businesses which are:

(1) seeking to comply with new requirements imposed pursuant to the federal Clean Air Act (42 U.S.C. 7401 et seq. as amended by P.L. 101-549), the New York state clean air compliance act as, established pursuant to chapter six hundred eight of the laws of nineteen hundred ninety-three, the provisions of article seventeen of the environmental conservation law relating to water pollution control, and the provisions of title nine of article twenty-seven of the environmental conservation law, relating to industrial hazardous waste management, or any rules and regulations promulgated thereunder; and are

(2) seeking to comply with new requirements imposed pursuant to federal or state environmental laws; and are

(3) in highly distressed areas or minority-owned business enterprises or women-owned business enterprises.

(e) Upon approval or denial of an application, the corporation shall notify the applicant of such action by regular mail. The corporation may also notify any financial institution of the approval or denial of an application.

6. (a) Decisions to execute a loan pursuant to this section shall be made solely by the financial institution and may provide for such interest rate, fees and other terms and conditions as the financial institution and borrower may agree, provided, however, that:

(1) unless approved by the corporation, the term of the loan shall not exceed seven years or the estimated useful life of any financed changes in pollution prevention or control methods or equipment, whichever is less; and

(2) if the amount of the loan is determined by a commitment agreement that establishes a line of credit, the amount of the actual loan is the maximum amount available to the borrower under the agreement.

(b) A small business, in receipt of a loan pursuant to this section, shall pay an origination fee to the corporation upon distribution of loan proceeds. Moneys from such a fee shall be deposited in the fund; provided, however, that the corporation, in consultation with the director of the division of the budget, may use a portion of such moneys for

the administration of the fund. Nothing contained in this section shall prohibit the financing of the origination fee in the terms of the loan.

7. (a) Upon the default of a loan made pursuant to this section, a financial institution may file contemporaneously with a notice of default to the small business, a claim with the corporation to recover the outstanding principal plus accrued interest and one-half of the documented out-of-pocket expenses incurred in pursuing loan collection efforts, including preservation of collateral. The amount of principal and accrued interest included in the claim may not exceed the principal amount agreed upon at the time of closing, plus accrued interest attributable to such agreed upon amounts, consistent with the requirements of this section.

(b) For loans made pursuant to this section, the financial institution shall determine a loan to be in default in a manner consistent with methods employed by the financial institution for similar loans not made pursuant to this section.

(c) The corporation is authorized and directed to adopt rules and regulations governing the payment of claims from the fund. Such rules and regulations shall provide that upon receipt of a claim filed by a financial institution, the corporation shall, within ten business days, pay from the fund the amount of the claim as submitted, unless information provided by the financial institution is found by the corporation to be incomplete or was known by the financial institution to be false at the closing of the loan. The terms of the payment of claims from the fund shall be included in the agreement entered into by the corporation and the financial institution pursuant to subdivision five of this section.

(d) Upon payment of a claim, the corporation shall report the claim to the office of the attorney general, who then shall exercise the rights of subrogation. The financial institution thereafter shall assign to the attorney general any right, title, or interest to any collateral, security, or other right of recovery in connection with the loan. Any money received by the attorney general as a result of enforcement actions taken with respect to any collateral, security or other rights of recovery shall be promptly deposited by the attorney general through the corporation in the fund, less any out-of-pocket expenses incurred by the attorney general in taking such enforcement actions.

8. Pursuant to rules and regulations of the corporation, the corporation may terminate the participation of a financial institution in the fund upon a determination that such institution is not in substantial compliance with the requirements of this section or the provisions of an agreement executed pursuant to subdivision five of this section. The corporation shall provide notice to a financial institution at least ninety days in advance of such termination.

9. The corporation shall monitor the activities of participating financial institutions and small businesses and may require such periodic reports or other information as deemed necessary from such institutions and businesses on the status of loans made pursuant to this section. On or before the first day of March following the effective date of this section, and on such date annually thereafter, the corporation shall submit to the governor, the temporary president of the senate and the speaker of the assembly a report on the fund. Such report shall include, but not be limited to:

(a) the total number and amount of loans and the average amount of loans leveraged by the fund from financial institutions in each economic

development region of the state as defined in section two hundred thirty of the economic development law;

(b) the total number and amount of loans and the average amount of loans leveraged by the fund from financial institutions pursuant to paragraph (d) of subdivision five of this section in each such region; and

(c) the total number and amount of claims submitted by financial institutions for recovery of moneys through the fund, the total number and amount of claims paid from the fund and a summary of the circumstances associated with claims on the fund.

10. (a) On or before the first day of September following the effective date of this section, and on such date every two years thereafter, the corporation shall submit to the director of the budget, the chair of the senate finance committee and the chair of the assembly ways and means committee an evaluation of the effectiveness of the fund in realizing pollution prevention by small businesses and securing the compliance of such businesses with federal and state environmental laws. Such evaluation shall be prepared by an entity independent of the corporation selected through a request for proposal process and shall include recommendations for improvements to the implementation of the fund to enhance small business pollution prevention, control and compliance.

(b) On or before the first day of September following the effective date of this section, and on such date every two years thereafter, the corporation shall submit to the director of the budget, the chair of the senate finance committee and the chair of the assembly ways and means committee an evaluation of the effectiveness of the fund in securing the compliance of small businesses with the requirements of the federal Clean Air Act (42 U.S.C. §7401 et seq. as amended by P.L. 101-549), the New York state clean air compliance act, as established pursuant to chapter six hundred eight of the laws of nineteen hundred ninety-three, the provisions of article seventeen of the environmental conservation law relating to water pollution control, and the provisions of title nine of article twenty-seven of the environmental conservation law, relating to industrial hazardous waste management, or any rules and regulations promulgated thereunder. Such evaluation shall be prepared by an entity independent of the corporation selected through a request for proposal process and shall include recommendations for improvements to the implementation of the fund to enhance small business pollution prevention, control and compliance.

11. The corporation shall market the fund program to small businesses in cooperation with financial institutions, statewide trade associations representing financial institutions and small businesses, local and regional economic development agencies, and the small business stationary source ombudsman program, established pursuant to section one hundred thirty-seven of the economic development law. The corporation shall develop a program to promote awareness of the program in all geographic regions of the state, to ensure maximum participation by small businesses and financial institutions and the fiscal integrity of the fund. Agreements entered into by the corporation pursuant to subdivision five of this section shall require a plan by each financial institution for marketing the fund in highly distressed areas, empire zones and to minority-owned business enterprises and women-owned business enterprises, with appropriate lending objectives identified by each financial institution for such areas and businesses.

12. The corporation is authorized and directed to adopt rules and regulations for the establishment and administration of the fund, in

accordance with the state administrative procedure act. No funds shall be disbursed from this program until such rules and regulations have been promulgated by the corporation.

13. For the purposes of this section, the following words or terms shall mean:

(a) "financial institution" shall mean a banking organization, as defined pursuant to section two of the banking law, a New York small business investment company and a New York specialized small business investment company, as defined pursuant to section two hundred twenty-eight-a of the banking law, a local development corporation, as defined in subdivision eight of section eighteen hundred one of this chapter, and the New York business development corporation established pursuant to section two hundred ten of the banking law.

(b) "fund" shall mean the small business environmental fund established pursuant to this section.

(c) "highly distressed area" shall mean an area meeting the criteria as set forth under subdivision (a) of section nine hundred fifty-eight of the general municipal law.

(d) "minority-owned business enterprise" shall have the same meaning as defined in subdivision seven of section three hundred ten of the executive law.

(e) "pollution control equipment" shall mean any equipment approved by the corporation as necessary for compliance with new requirements of the federal Clean Air Act (42 U.S.C. § 7401 et seq. as amended by P.L. 101-549), the New York state clean air compliance act, as established pursuant to chapter six hundred eight of the laws of nineteen hundred ninety-three, the provisions of article seventeen of the environmental conservation law relating to water pollution control, and the provisions of title nine of article twenty-seven of the environmental conservation law, relating to industrial hazardous waste management, or any rules and regulations promulgated thereunder.

(f) "pollutant" shall mean any substance, contaminant, waste or emission which contributes to pollution as defined in article one of the environmental conservation law.

(g) "pollution prevention" shall mean changes in production methods or raw materials that reduce, avoid, or eliminate the use of toxic or hazardous substances or the generation of such substances or pollutants per unit of product, so as to reduce risks to the health of workers, consumers, or the environment, without shifting risks between workers, consumers, or environmental media. Pollution prevention includes the redesign, modification, upgrade or replacement of production processes, equipment or technology; reformulation or redesign of products; substitution of inputs or raw materials; improvements in housekeeping, maintenance, training, or inventory control; and extended use or reuse of materials through methods integral to the production process, such as in-process, closed-loop recycling. It does not include incineration, transfer from one medium of release or discharge to another media, off-site or out-of-production recycling, end-of-pipe treatment or pollution control.

(h) "toxic or hazardous substance" shall mean any substance listed as a substance hazardous to public health, safety or the environment in regulations promulgated pursuant to article thirty-seven of the environmental conservation law.

(i) "small business" shall have the same meaning as defined in section one hundred thirty-one of the economic development law.

(j) "women-owned business enterprise" shall have the same meaning as subdivision fifteen of section three hundred ten of the executive law.

§ 3. Subdivision 1 of section 16-m of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, is amended by adding a new paragraph (o) to read as follows:

(o) Assistance to capitalize the small business environmental fund, established pursuant to section twelve hundred eighty-five-v of the public authorities law.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such date and provided further that the amendments to section 16-m of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, made by section three of this act, shall not affect the expiration of such section and shall be deemed to expire therewith.