

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.

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

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

17 3. Such fund shall consist of all of the following: (a) moneys appro-
18 priated by the state legislature for the purpose of such fund or other-
19 wise transferred by the state for deposit therein by the comptroller as
20 required by law; (b) payments of the loan origination fee authorized
21 pursuant to subdivision six of this section; (c) investment earnings on
22 amounts in such fund; (d) the proceeds of bonds or notes issued by the
23 corporation for purposes of leveraging capital on behalf of small busi-
24 nesses seeking to achieve pollution prevention and/or comply with feder-
25 al or state environmental laws; and (e) any other payments received from
26 the federal government or other sources for the purposes of the fund.

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

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

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

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

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

8 (c) Within twenty-eight days of receipt of an application pursuant to
9 this section, the corporation shall either approve or reject such appli-
10 cation. The corporation shall approve an application pursuant to para-
11 graph (b) of this subdivision based upon a determination that:

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

15 (2) a loan is required to finance the pollution prevention or compli-
16 ance activities or to finance the purchase, lease, installment or acqui-
17 sition of pollution control equipment;

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

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

22 (d) In the approval of applications, the corporation shall give pref-
23 erence to those small businesses which are:

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

33 (2) seeking to comply with new requirements imposed pursuant to feder-
34 al or state environmental laws; and are

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

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

41 6. (a) Decisions to execute a loan pursuant to this section shall be
42 made solely by the financial institution and may provide for such inter-
43 est rate, fees and other terms and conditions as the financial institu-
44 tion and borrower may agree, provided, however, that:

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

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

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

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

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

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

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

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

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

45 9. The corporation shall monitor the activities of participating
46 financial institutions and small businesses and may require such period-
47 ic reports or other information as deemed necessary from such insti-
48 tutions and businesses on the status of loans made pursuant to this
49 section. On or before the first day of March following the effective
50 date of this section, and on such date annually thereafter, the corpo-
51 ration shall submit to the governor, the temporary president of the
52 senate and the speaker of the assembly a report on the fund. Such report
53 shall include, but not be limited to:

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

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

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

7 (c) the total number and amount of claims submitted by financial
8 institutions for recovery of moneys through the fund, the total number
9 and amount of claims paid from the fund and a summary of the circum-
10 stances associated with claims on the fund.

11 10. (a) On or before the first day of September following the effec-
12 tive date of this section, and on such date every two years thereafter,
13 the corporation shall submit to the director of the budget, the chair of
14 the senate finance committee and the chair of the assembly ways and
15 means committee an evaluation of the effectiveness of the fund in real-
16 izing pollution prevention by small businesses and securing the compli-
17 ance of such businesses with federal and state environmental laws. Such
18 evaluation shall be prepared by an entity independent of the corporation
19 selected through a request for proposal process and shall include recom-
20 mendations for improvements to the implementation of the fund to enhance
21 small business pollution prevention, control and compliance.

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

40 11. The corporation shall market the fund program to small businesses
41 in cooperation with financial institutions, statewide trade associations
42 representing financial institutions and small businesses, local and
43 regional economic development agencies, and the small business station-
44 ary source ombudsman program, established pursuant to section one
45 hundred thirty-seven of the economic development law. The corporation
46 shall develop a program to promote awareness of the program in all
47 geographic regions of the state, to ensure maximum participation by
48 small businesses and financial institutions and the fiscal integrity of
49 the fund. Agreements entered into by the corporation pursuant to subdi-
50 vision five of this section shall require a plan by each financial
51 institution for marketing the fund in highly distressed areas, empire
52 zones and to minority-owned business enterprises and women-owned busi-
53 ness enterprises, with appropriate lending objectives identified by each
54 financial institution for such areas and businesses.

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

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

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

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

14 (b) "fund" shall mean the small business environmental fund estab-
15 lished pursuant to this section.

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

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

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

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

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

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

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

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

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

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

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