

STATE OF NEW YORK

844--A

2019-2020 Regular Sessions

IN SENATE

January 9, 2019

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 § 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

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

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

17 § 3. Section 16-a of section 1 of chapter 174 of the laws of 1968,
18 constituting the New York state urban development corporation act, as
19 amended by chapter 477 of the laws of 2002, subdivision 3-a as added by
20 chapter 474 of the laws of 2017, subdivision 20 as amended by chapter
21 378 of the laws of 2018 and subdivision 21 as amended by chapter 524 of
22 the laws of 2005, is amended to read as follows:

23 § 16-a. [~~Regional~~] Small business regional revolving loan program. (1)
24 The corporation shall establish a fund to be known as the "small busi-
25 ness regional revolving loan trust fund" and shall pay into such fund
26 any monies made available to the corporation for such fund from any
27 source. The monies held in or credited to the fund shall be expended
28 solely for the purposes set forth in this section. The corporation shall
29 not commingle the monies of such fund with any other monies of the
30 corporation or any monies held in trust by the corporation.

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

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

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

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

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

55 (3-a) Notwithstanding subdivision three of this section, where appli-
56 cable, the corporation is authorized to enter into agreements as may be

1 necessary for the administration and reporting of funds repaid,
2 received, expended or collected in a manner consistent with the
3 provisions in section sixteen-t of this act. The use of such funds by
4 the corporation shall be consistent with the terms, conditions and
5 restrictions set forth in subdivision four of this section, to provide
6 financial assistance to eligible regional corporations as defined in
7 subdivision eighteen of section three of this act. Outstanding expenses,
8 loans and other obligations executed prior to the effective date of this
9 subdivision shall be subject to the terms and conditions of the original
10 contract or contracts.

11 (4) Regional corporations shall be selected by the corporation from
12 among eligible applicants to administer a small business regional
13 revolving loan program. An eligible applicant shall:

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

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

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

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

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

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

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

37 (c) explain the methods and criteria to be used in determining firms
38 eligible for financial assistance from the small business regional
39 revolving loan program;

40 (d) describe the means for coordinating financial assistance available
41 from the small business regional revolving loan program with financial
42 assistance available from other public funding sources within the region
43 and how such program will be used to leverage private financing for
44 projects;

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

47 [~~(f)~~] (e) contain such other information as the corporation deems
48 appropriate.

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

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

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

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

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

6 (6-a) The corporation shall, every five years, recertify that each
7 regional corporation has complied with the terms and conditions of this
8 section. In the event a regional corporation is not recertified, or its
9 certification is withdrawn pursuant to subdivision nineteen of this
10 section, then the corporation shall give written notice to such regional
11 corporation which shall thereafter neither make new loans nor undertake
12 new obligations except upon written approval of the corporation. The
13 corporation may thereafter certify another regional corporation in the
14 manner provided in this section for the selection of regional corpo-
15 rations. Upon the certification of a successor regional corporation, all
16 remaining loan funds, records and accounts of the regional corporation
17 not recertified shall be transferred to the corporation and the regional
18 corporation not recertified shall cease to function pursuant to this
19 section. The corporation shall transfer returned funds to a successor
20 regional corporation, or in the event no successor regional corporation
21 is formed, equally to other existing regional corporations.

22 (7) A regional corporation certified by the corporation shall use the
23 funds received from the corporation, subject to the terms, conditions
24 and restrictions set forth in this section, to provide financial assist-
25 ance to eligible businesses as defined in subdivision seventeen of
26 section three of this act, for projects that demonstrate a substantial
27 likelihood of providing increases in net new permanent jobs or retaining
28 jobs in businesses that need such financial assistance to remain viable.
29 The regional corporation certified by the corporation shall also use the
30 funds received from the corporation, subject to the terms, conditions,
31 and restrictions set forth in this section, to provide financial assist-
32 ance to micro-enterprises, defined as any commercial business with five
33 or fewer employees, one or more of whom is the owner.

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

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

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

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

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

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

55 (d) of businesses in the early stages of development that have been
56 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;

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

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

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

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

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

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

15 (a) projects that would result in the relocation of any business oper-
16 ation from one municipality within the state to another, except under
17 one of the following conditions: (i) when a business is relocating
18 within a municipality with a population of at least one million where
19 the governing body of such municipality approves such relocation; or
20 (ii) the regional corporation notifies each municipality from which such
21 business operation will be relocated and each municipality agrees to
22 such relocation;

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

26 (c) refinancing any portion of the total project cost or other exist-
27 ing loans or debts of an applicant, except for the purpose of trans-
28 ferring to the employees or to other local interests ownership of a
29 company that would otherwise depart from or cease or substantially
30 reduce operations in the state and except when such refinancing is
31 required to enable a viable business to maintain or expand its oper-
32 ations in the state;

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

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

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

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

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

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

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

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-]~~ (a) The lending organization shall submit to the corporation annual reports stating: the number of program loans made; the amount of program funding used for loans; the use of loan proceeds by the borrower; the number of jobs created or retained; the status of each outstanding program loan, including fund balance; and such other information as the corporation may require.

(b) 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.

(c) Beginning April 1, 2019, the corporation shall publish on its website the information contained in the annual reports required under

1 paragraphs (a) and (b) of this subdivision in aggregate form omitting
2 borrower identifiable information.

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

9 (b) Between evaluation due dates, the corporation shall maintain the
10 necessary records and data required to satisfy such evaluation require-
11 ments and to satisfy information requests received from the director of
12 the budget, the chairperson of the senate finance committee and the
13 chairperson of the assembly ways and means committee between such evalu-
14 ation due dates.

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

19 § 4. Paragraph (f) of subdivision 2 of section 16-c of section 1 of
20 chapter 174 of the laws of 1968, constituting the New York state urban
21 development corporation act, as added by chapter 169 of the laws of
22 1994, is amended to read as follows:

23 (f) The provisions of subdivisions eight, nine, and fourteen through
24 nineteen of section sixteen-a of this act pertaining to the small busi-
25 ness regional revolving [~~loans~~] loan trust fund shall also be applicable
26 to the minority and women revolving loan trust fund, provided that:
27 where the term "regional corporation" appears therein it shall be inter-
28 preted to mean an entity selected to administer a minority and women
29 revolving loan trust fund account, and "small business regional revolv-
30 ing [~~loans~~] loan trust fund" shall mean a minority and women revolving
31 loan trust fund, and where the term "this section" appears therein it
32 shall mean this section sixteen-c.

33 § 5. Paragraph (h) of subdivision 1 of section 16-e of section 1 of
34 chapter 174 of the laws of 1968, constituting the New York state urban
35 development corporation act, as added by chapter 169 of the laws of
36 1994, is amended to read as follows:

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

44 § 6. Subdivision 13 of section 16-e of section 1 of chapter 174 of the
45 laws of 1968, constituting the New York state urban development corpo-
46 ration act, as added by chapter 169 of the laws of 1994, is amended to
47 read as follows:

48 (13) Regional loan fund account grants. Assistance from this program
49 may be provided for grants of up to five hundred thousand dollars to
50 capitalize, and up to two hundred thousand dollars to recapitalize,
51 small business regional revolving loan trust fund accounts established
52 pursuant to section sixteen-a of this act and up to two hundred thousand
53 dollars to recapitalize minority and women revolving loan trust fund
54 accounts established pursuant to section sixteen-c of this act; and up
55 to two hundred thousand dollars to provide the local match for appropri-
56 ately federally-financed community-based loan funds.

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

5 The corporation is authorized, within available appropriations in the
6 empire state economic development fund established pursuant to section
7 16-m of this act, to provide financial assistance in the form of loans,
8 loan guarantees, working capital loans, and interest subsidy grants to
9 subsidize loans from federally chartered instrumentalities and state and
10 private lending institutions, including agricultural cooperative corpo-
11 rations, provided that such assistance to state lending institutions
12 shall not exceed one-third of the total project cost or four hundred
13 thousand dollars, whichever is less, to agricultural enterprises seeking
14 to implement the projects listed in this paragraph. Funds for such
15 loans, grants, subsidies, or any other assistance specified pursuant to
16 this act may come from funds derived from the financial assistance for
17 small and medium-sized business assistance projects established pursuant
18 to section 9-a of this act, the small business regional revolving loan
19 trust fund established pursuant to section 16-a of this act, the
20 regional economic development partnership program established pursuant
21 to section 16-e of this act, the empire state economic development fund
22 established pursuant to section 16-m of this act, or from any other
23 funds, programs, or projects administered by the corporation or by other
24 state appropriations.

25 § 8. This act shall take effect immediately.