

# STATE OF NEW YORK

4503--A

2023-2024 Regular Sessions

## IN ASSEMBLY

February 16, 2023

Introduced by M. of A. STIRPE, THIELE -- read once and referred to the Committee on Small Business -- recommitted to the Committee on Small Business in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. Paragraphs l and m of subdivision 2 of section 137 of the  
2 economic development law, paragraph l as amended and paragraph m as  
3 added by chapter 594 of the laws of 1994, are amended and a new para-  
4 graph n is added to read as follows:  
5 l. providing information to small business stationary sources on  
6 state-sponsored programs offering financial and technical assistance,  
7 and in locating sources of funding for compliance with the requirements  
8 of article nineteen of the environmental conservation law and the Act;  
9 [~~and~~]  
10 m. establishing procedures for assuring the confidentiality of infor-  
11 mation received from small business stationary sources[~~-~~]; and  
12 n. marketing the small business environmental fund established pursu-  
13 ant to section twelve hundred eighty-five-v of the public authorities  
14 law to small business stationary sources, assisting the New York state  
15 urban development corporation in the projection of demand for financial  
16 assistance pursuant to section sixteen-m of the New York state urban  
17 development corporation act.  
18 § 2. The public authorities law is amended by adding a new section  
19 1285-v to read as follows:

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

LBD00411-03-4

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  
30 provisions of title nine of article twenty-seven of the environmental  
31 conservation law, relating to industrial hazardous waste management, or  
32 any rules and 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 (p) to read as follows:

6 (p) 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 the amendments to  
11 section 16-m of section 1 of chapter 174 of the laws of 1968, constitut-  
12 ing the New York state urban development corporation act, made by  
13 section three of this act, shall not affect the expiration of such  
14 section and shall be deemed to expire therewith. Effective immediately,  
15 the addition, amendment and/or repeal of any rule or regulation neces-  
16 sary for the implementation of this act on its effective date are  
17 authorized to be made and completed on or before such effective date.