Chapter 175 of the laws of 1968

Urban development guarantee fund of N.Y.

**Section 1. Short title.** This act shall be known and may be cited as the "Urban development guarantee fund of New York act".

**§ 2. Statement of legislative findings and purposes.** The legislature hereby finds that in certain urban areas of our state the growth of small business is impeded by the unavailability of reasonable credit for buildings, equipment, credit for inventory and working capital. This unavailability of reasonable credit restricts business growth and job opportunities and causes business failures resulting in unemployment and underemployment with resulting persistent poverty in such urban areas. The amelioration of these conditions is a responsibility of both the public and private sector of our economy. Rehabilitation of the economic life of blighted areas is necessary in order to prevent business failures, to maintain the income of existing small business enterprises, to provide a business climate conducive to the growth of new small business enterprises, and to broaden the tax base of such urban areas, all to afford more meaningful and rewarding business and job opportunities for the residents of such areas, thereby reducing the hazards of unemployment and raising the job opportunities of the underemployed.

The legislature further finds that in certain urban areas of our state the construction, reconstruction, rehabilitation and improvement of housing accommodations is impeded by the shortage of mortgage funds at reasonable interest rates and the lack of available credit for the rehabilitation of older buildings which lack proper heating or sanitary facilities or which do not comply in full with modern building and maintenance code standards. The unaided efforts of private enterprise have not provided and cannot provide an adequate supply of safe and sanitary housing within the financial reach of many families in urban areas. The upgrading and improvement of such areas through programs of new construction, rehabilitation and home improvement can provide additional tax revenues to the community and assist in attracting and retaining business and industry.

In order to assist in the rehabilitation of these areas and give constructive attention to the welfare of the needy residents of these areas, the legislature finds and declares that the marshalling of public and private capital to make sufficient credit available at the lowest feasible interest rates to encourage the expansion of small business, to provide the incentives for the establishment of sound new small business enterprises and to promote the construction and rehabilitation of housing accommodations in such areas, will create new job opportunities, effectively reduce unemployment and strengthen the economic base of the community as a whole, thereby reducing the burdens of poverty and need.

This result can best be accomplished by a loan guarantee program to guarantee loans to small businesses and owners of housing accommodations, including one and two family homes and multiple dwellings, unable to obtain reasonable credit through conventional financial sources. The legislature further finds that the adoption of such a loan guarantee program to mitigate the economic and social evils of unemployment, underemployment and inadequate housing is for a public purpose, and to achieve these ends there should be created a non-profit corporation to be known as the urban development guarantee fund of New York, having such powers and duties as set forth herein.

**§ 3. Definitions.** 1. "Small business" shall mean a business located in an area having one or more of the characteristics described in section two which is unable to obtain adequate financing to maintain a stabilized work force or increase job opportunities by virtue of (a) its location, (b) its net assets or (c) its dollar volume of business.

2. "Fund" shall mean the urban development guarantee fund of New York created by section four of this act.

3. "Small business project" shall mean construction of any new building, purchase of an existing building, or refinancing of an existing building in order to facilitate substantial improvement thereto, the financing of real property deemed essential for the conduct

of business, the extension or provision of utilities and any other appurtenant facilities to be used by any small business, or any necessary machinery, equipment or stock, working capital or other capital investment therein, or any combination of the foregoing, which the fund shall determine will tend to provide gainful employment for the people of the state and/or increase the tax base of the economy, or diversify and expand small business, or any combination of the foregoing.

4. "Housing project" shall mean the construction of any new building, purchase of an existing building or refinancing of an existing building and real property deemed essential to such project, in order to facilitate substantial improvement thereto, designed and intended to provide housing accommodations for persons and families which cannot afford safe and sanitary housing accommodations provided by the unaided efforts of private enterprise, and such facilities as may be incidental and appurtenant thereto.

5. "Loan guarantee fund" shall mean the fund created in section six of this act.

6. "Operation and maintenance fund" shall mean the fund created in section seven of this act.

7. "Lending institution" shall mean the original lender under the loan agreement of participants therein and its successors and assigns, and may include but is not limited to, an individual lender, corporation, insurance company, bank, investment company, executor, trustee or other fiduciary, pension, profit sharing, and retirement fund.

8. "Payments" shall mean periodic payments called for under the terms of a loan, and may include, but is not limited to, interest, installments of principal, taxes and assessments, loan insurance premiums and hazard insurance premiums.

9. "New York state urban development corporation" shall mean the corporation created by the New York state urban development corporation

act.

**§ 4. Urban development guarantee fund of New York.** 1. There is hereby created a non-profit corporation which shall be known as the "Urban Development Guarantee Fund of New York." Except as otherwise provided in this act, the fund shall have all the powers, privileges and immunities which are now or may hereafter be conferred on business corporations by the business corporation law.

2. The business of the fund shall be managed by, and its powers, functions and duties shall be exercised through a board of directors, consisting of the directors of the New York state urban development corporation.

3. The chairman of the fund shall be the chairman of the New York state urban development corporation. Each director shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties with the fund.

4. Notwithstanding any inconsistent provisions of law, general, special or local, no officer or employee of the state or of any civil division thereof, shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership on the fund created by this section; provided, however, a director who holds such other public office or employment shall receive no additional compensation or allowance for services rendered pursuant to this act, but shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of such services.

5. The fund and its corporate existence shall continue until terminated by law, which law shall provide for the disposition of the properties and assets of the fund and the assumption of its liabilities, if any. In no event shall such law take effect while debentures, guarantees or other obligations of the fund are outstanding, unless adequate provision is made in such law for the liquidation, satisfaction or securing of such obligations.

6. The powers of the fund shall be exercised by affirmative vote of no less than five of the directors thereof then in office. The fund may delegate to one or more of its directors, or its officers, agents and employees, such powers and duties as it may deem proper.

7. The fund may appoint one or more advisory committees consisting of not more than seven members each to consider and advise the fund upon all matters submitted to them by the fund and to recommend to the fund such changes in the administration of this act and the operations of the fund as the advisory committee may deem desirable. Members of advisory committees shall serve without salary for such terms, not to exceed four years, as the fund may determine. Each member of an advisory committee shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his duties.

**§ 5. Powers and limitations.** 1. In addition to the powers granted by the business corporation law and except as otherwise provided by this act, the fund shall have power to:

(a) Guarantee loan repayments to a lending institution that has provided the funding for a small business project or housing project, as defined herein, not to exceed eighty percentum of the amount of such loan, upon such terms and conditions as the fund may prescribe, and for such purposes, the fund may enter into such agreement or agreements with lending institutions or other persons as required.

(b) Accept gifts, grants or loans from, and enter into contract or other transaction with, any federal or state agency, any municipality, any private organization or any other source.

(c) Enter into agreements with prospective lending institutions and borrowers for the purpose of planning, designing, constructing, acquiring, altering and financing projects.

(d) When it becomes desirable for the fund to safeguard itself from losses, it may acquire, purchase, manage and operate, hold and dispose of real and personal property, take assignments of rentals and leases and make and enter into all contracts, leases, agreements and arrangements necessary or incidental to the performance of its duties.

(e) In order to further the purposes of this act, or to safeguard the loan guarantee fund, purchase, acquire and take assignments of notes, mortgages, and other forms of security and evidences of indebtedness, purchase, acquire, attach, seize, accept or take title to any project by conveyance, or when an insured loan thereon is in default, foreclose, sell, lease or rent the subject matter provided for by the loan.

(f) Prescribe standards and criteria by which applications for loan guarantees for small business projects and housing projects will be judged, insofar as such standards and criteria are not inconsistent with the purposes of this act.

(g) Guarantee to any bonding agency authorized to do business in this state any bond necessary to the activity of the small business or for the undertaking of a small business project or housing project. Such guarantee shall not exceed eighty percentum of the face amount of any loss incurred by the bonding agency.

(h) Issue and sell its debentures, bearing such interest rates and having such maturities and other terms and provisions as may be determined by the fund.

(i) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted under this act, or under any other law, special, general or local.

2. No part of the net earnings of the fund shall inure to the benefit of any individual and no employee, director or officer of the fund shall receive any pecuniary benefit from the fund except reasonable compensation for services actually rendered to the fund. The fund shall not carry on propaganda or otherwise attempt to influence legislation.

3. The fund shall not issue shares nor shall any debentures of the fund be convertible to shares.

**§ 6. Loan guarantee fund.** The fund shall establish a loan guarantee fund. The loan guarantee fund shall be a non-lapsing, revolving fund to be used for the purpose of carrying out the provisions of this act. To such loan guarantee fund shall be charged payments required by loan defaults. To such loan guarantee fund shall be credited all receipts of the fund, other than receipts allocated for the payment of current operating expenses, including loan guarantee premiums, gifts, grants or loans, proceeds of the sale of debentures by the fund, and proceeds from the sale, disposal, lease or rental of real or personal property which the fund may receive under the provisions of this act. Monies of the loan guarantee fund, not needed to meet current obligations of the fund, shall be deposited to the credit of such loan guarantee fund and may be invested as the directors of the fund shall determine.

**§ 7. Operation and maintenance fund.** The fund shall establish an operation and maintenance fund, to which shall be charged any and all operating expenses of the fund, including but not limited to, salaries, wages, rents, utility charges, office supplies and equipment, and to which shall be credited all receipts of the fund necessary to meet such operating expenses.

**§ 8. Guarantee of loans.** (a) The fund is authorized to guarantee repayments of a loan made by a lending institution to provide funding for small business or housing project as defined herein, not to exceed eighty per centum of the principal amount of the obligation, upon such terms and conditions as the fund may prescribe, provided that the aggregate amount of the unpaid balance of all obligations so guaranteed and outstanding at any one time shall not exceed one million dollars during the first fiscal year of operations of the fund, and in any succeeding fiscal year, five times the average annual balance in the loan guarantee fund for the preceding fiscal year, and provided further, however, that the total potential liability of the fund to a lending institution on behalf of any one borrower shall not exceed one hundred fifty thousand dollars.

(b) The fund is also authorized to guarantee repayments of loans made by a lending institution to a purchaser of either a condominium unit in a multiple dwelling organized under the condominium act, or shares of stock in a cooperative corporation which owns a multiple dwelling, where such purchaser intends to reside in such condominium unit or such cooperatively-owned multiple dwelling. The amount of such guarantee shall not exceed the lesser of eighty per centum of the purchase price of the unit or of the shares of stock allocable to the unit, as the case may be, or $25,000; and the term of the guarantee shall not exceed twenty-five years. No loan shall be guaranteed if interest thereon exceeds the legal rate. The aggregate amount of the unpaid balance of all obligations guaranteed under this subdivision and subdivision (a) hereof shall not exceed one million dollars during the first fiscal year of operation hereunder and in any succeeding fiscal year, five times the average annual balance in the loan guarantee fund for the preceding fiscal year hereunder.

**§ 9. Conditions for guarantee.** In order for a loan to be guaranteed under the provisions of this act, the loan to be guaranteed must be executed by a borrower to whom credit is not reasonably available, and in the case of a borrower undertaking a housing project, provide financing for the acquisition, construction, reconstruction or rehabilitation of housing accommodations for persons or families which cannot afford safe and sanitary housing accommodations provided by the unaided efforts of private enterprise.

**§ 10. Loan guarantee premium.** The fund is authorized but not required to fix premiums for the guarantee of loan repayments under the provisions of this act, such premiums to be computed as a percentage, which shall not exceed one percentum per annum on that portion of the principal obligation guaranteed hereunder as the fund shall determine on the basis of all pertinent available data. Such premiums shall be payable by the borrower in such manner as shall be prescribed by the fund. The amount of premium is not required to be uniform among the various loans insured provided, however, that that premium provided for hereunder shall not be payable more than once on loan guarantees given under subdivision (b) of section eight of this act.

**§ 11. Expenses of the fund.** The fund may in its discretion expend such monies as may be necessary for any of its expenses, including administrative, legal, actuarial and other services.

**§ 12. Obligations eligible for investment.** Obligations guaranteed by the fund under this act and participations therein are hereby made legal investments for all insurance companies, trust companies, banks, investment companies, savings banks, building and loan associations, credit unions, savings and loan associations, executors, administrators, guardians, conservators, trustees and other fiduciaries, pension, profit-sharing and retirement funds.

**§ 13. Contracts of guarantee; waivers.** (a) The fund shall arrange by contract with the lending institution or the borrower or both to safeguard the interest of the fund in the event of default by the borrower, including, at the discretion of the fund, provision for notice to the fund of default by the borrower, for foreclosure or other realization upon any security for the loan, for the time and conditions for payment to the lending institution by the fund of the amount of any loss to the lending institution guaranteed by the fund, and for the disposition of the proceeds realized from any security for the loan guaranteed. When it appears desirable for a temporary period upon default or threatened default by the borrower, the fund may itself make payments of installments of principal or interest or both, to the lending institution, and of taxes and insurance, which payments shall be repaid, under such conditions as the fund may prescribe, and the fund may also agree to revised terms of financing when such appear prudent.

(b) Upon request of the lending institution, the fund may at any time, under such equitable terms and conditions as it may prescribe, consent to the release of the borrower from his liability under the loan or consent to the release of parts of any secured property from the lien of the lending institution.

**§ 14. Interest of directors of the fund.** No director of the fund shall participate in any decision on any contract of guarantee in which he has any interest, direct or indirect, in the lending institution or borrower as set forth herein.

**§ 15. Limitation of liability.** Neither the directors nor any officer or employee of the fund, while acting within the scope of his authority, shall be subject to any personal liability resulting from the activities of the fund.

**§ 16. Designation and service of process on secretary of state and registered agent.** The directors of the fund shall file with the secretary of state a certificate setting forth the street address and the city and county in which the principal office of the fund is located within ten days of the establishment of such office. The secretary of state shall note such address upon his records. The provisions of sections three hundred four, three hundred five and three hundred six of the business corporation law shall be applicable to the fund.

**§ 17. Inconsistent provisions of other laws superseded.** Insofar as the provisions of this act are inconsistent with the provisions of any other law, general, special or local, the provisions of this act shall be controlling.

**§ 18. Construction.** This act, being necessary for the welfare of the State and its inhabitants, shall be liberally construed so as to effectuate its purposes.

**§ 19. Separability.** If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

**§ 20. Operative date of the fund.** No loan guarantee shall be made by the fund until there has been credited to the loan guarantee fund the sum of two hundred thousand dollars.