WEST VIRGINIA CODE CHAPTER 22 ARTICLE 24

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§22-24-1. Legislative findings, intent and purpose.

The Legislature hereby finds and declares that, in this state the protection and improvement of the environment, and the sustainability of small businesses, would be collectively enhanced by the establishment of a revolving low-interest small business environmental loan program, to provide partial relief from the burden small businesses face from compliance with existing and new state and federal environmental protection rules and regulations. The Legislature intends, in providing such a loan program for small businesses, that the program will further enable small businesses to aggressively comply with or exceed environmental obligations and requirements and thereby continue as a positive economic force in the State of West Virginia.

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§22-24-2. Definitions.

(a) "Authority" means the West Virginia economic development authority established in article fifteen, chapter thirty-one of this code.

(b) "Director" means the director of the West Virginia Division of Environmental Protection.

(c) "Division" means the West Virginia Division of Environmental Protection as established in article one of this chapter.

(d) "Eligible borrower" means a small business as defined in subsection (h) of this section that is required or needs to conduct a qualifying environmental project as defined in subsection (g) of this section. An eligible borrower also means a small business that desires to refinance the remaining balance of a debt that was incurred between January 1, 1992, and until two years after the effective date of this article, and that meets, or would have met, at the time of the original loan application, the requirements of this subsection. The refinancing option is not available for applications received by the authority more than three years after the effective date of this article. Funds available for refinanced loans may not, at any time, exceed forty percent of the total funds available plus the outstanding balance of funded loans.

(e) "Environmental project" means:

(1) Any environmental equipment purchases and installations of the equipment;

(2) Any associated transportation, technical or consulting services for installation or modification of environmental equipment;

(3) Any equipment, purchase and installation necessary to effect a process change that in the director's judgment yields significant environmental benefits; or

(4) Any combination of subdivisions (1), (2) or (3) of this subsection.

(f) "Pollution prevention" means the reduction or elimination of pollutants at the source through process modification, material substitution, in-process recycling, reduction of raw material use or other source reduction or elimination opportunities.

(g) "Qualifying environmental project" means an environmental project as described in subsection (e) of this section that is to be undertaken at a location in West Virginia and used for the purpose of:

(1) Effecting pollution elimination, minimization, prevention, recycling or abatement measures;

(2) Improving conditions or operations environmentally or substantially improving compliance with local, city, state, interstate or federal rules, regulations or laws pertaining

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to the environment and human health; or

(3) Purchasing equipment to establish environmental information, computing, consulting or laboratory services.

(h) "Small business" means a business that:

(1) Is properly registered with the appropriate agencies to do business in this state;

(2) Is actively conducting business in this state;

(3) Is current with all workers' compensation and unemployment premiums and state taxes; and

(4) Employs less than fifty full-time employees as defined in subsection (i) of this section within the entire company, business or corporation inside and outside this state.

(i) "Total number of full-time employees" means all full-time employees, plus all part-time employees counted as full-time employee equivalents, plus all full and part-time equivalent employees providing any type of service by contract or by any other arrangement.

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§22-24-3. Loan application requirements.

(a) Any eligible small business may apply for a small business environmental loan by submitting two identical copies of an application to the authority, on forms provided by the authority.

(b) The director shall determine environmental program qualification as provided by section two of this article, and based on the following factors:

(1) Pertinent environmental benefits of the project, including expected eliminations or reductions of regulated pollutants, solid wastes, hazardous wastes and in the use of toxic and hazardous chemicals, as well as expected benefits from recycling programs, and pollution prevention measures;

(2) The degree of compliance with applicable environmental rules, regulations, laws and statutes; and

(3) Borrower's past environmental compliance performance, including history of compliance, violations, permitting difficulties and reporting record.

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§22-24-4. Loan conditions.

A loan made to an eligible borrower as provided by this article shall:

(a) Have an interest rate not to exceed one half of the federal prime interest rate, but in no case may the annual rate be less than four percent: Provided, That environmental loan projects that have been determined by the director to be at a minimum, seventy-five percent "pollution prevention," shall be authorized an additional one half of one percent annual interest rate reduction and the annual interest for these special pollution prevention qualifying environmental projects may be as low as three and one-half percent;

(b) Have repayment terms not to exceed ten years;

(c) Have collateral terms acceptable to the authority; and

(d) Be in an amount of not less than $5,000 nor more than $150,000; but in no case may the amount exceed ninety percent of the cost of the project.

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§22-24-5. Small business environmental revolving loan account.

(a) The small business environmental revolving loan account is hereby continued in the authority and shall be made available for environmental loans defined by this article for any type of qualifying environmental project. Loans may be issued only during the five-year period commencing on the effective date of this article unless the time period is otherwise extended by the Legislature. The administration of this loan program is authorized for one year beyond the last payment date for any outstanding loan.

(b) The environmental revolving loan account shall be funded by appropriations from the Legislature and, at the director's discretion, by using portions of penalties and fines that are collected from various sources, including violators that economically benefited by noncompliance and the director is also authorized to accept gifts, donations, contributions, bequests or devises of money, security or property for deposit in the account: Provided, That the maximum value of all active outstanding loans, combined with funds in reserve at any time, may not exceed $5 million.

(c) Interest income from the small business environmental loan program as well as appropriations from the Legislature shall be used to defray the operating costs of the program, including, but not limited to, administration, facilities, salaries and travel. Any excess interest income shall be used to reestablish the loan program to its maximum authorized limit of $5 million, with additional excesses returned to the state's general revenue account. If interest income is not projected to provide the necessary operating funds for all aspects of the small business environmental loan program for any one year, the authority shall request the necessary funding in the annual budget request.

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§22-24-6. Loan processing.

The authority shall: (a) Process small business environmental loan applications and assure that a copy is forwarded to the director for eligibility review; (b) confirm that the director has certified the environmental acceptability of the project; (c) verify the borrower's eligibility as provided by section two of this article; (d) evaluate the borrower's financial stability, needs and ability to repay based upon an appropriate examination of financial information, including, but not limited to, income and credit histories, income tax returns, financial statements and collateral offered to secure the loan; (e) process loans for payments; and (f) establish loan processing procedures that include, but are not limited to, loan approvals, accounting, authorizations for payments, loan repayments and auditing of the small business environmental loan program. The authority shall implement reporting requirements that include the total number of full-time employees of the loan recipient on September 30, of each calendar year for the term of the loan.

The authority shall act upon loan requests within forty-five days of receipt of a complete application as determined by the authority.

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