CHAPTER 13

SMALL ENTERPRISE GROWTH PROGRAM

§381. Small Enterprise Growth Program established

There is established the Small Enterprise Growth Program. [PL 1995, c. 699, §3 (NEW).]

SECTION HISTORY

PL 1995, c. 699, §3 (NEW).

§382. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1995, c. 699, §3 (NEW).]

1. Board. "Board" means the Small Enterprise Growth Board.
[PL 1995, c. 699, §3 (NEW).]

2. Fund. "Fund" means the Small Enterprise Growth Fund.
[PL 1995, c. 699, §3 (NEW).]

3. Program. "Program" means the Small Enterprise Growth Program, which encompasses the Small Enterprise Growth Fund and any side fund created by the board.
[PL 2009, c. 475, §1 (AMD).]

3-A. Program funds. "Program funds" means the Small Enterprise Growth Fund and any side funds created by the board.
[PL 2009, c. 475, §2 (NEW).]

4. Qualifying small business. "Qualifying small business" means, for the purpose of an initial disbursement by the board under section 388, a business employing 50 or fewer employees or having gross sales not exceeding $5,000,000 within the most recent 12 months for which financial statements are available. For the purpose of a subsequent disbursement, "qualifying small business" means a business to which the board has previously made a disbursement and that, in the judgment of the board, evidences continued potential for high growth.
[PL 2001, c. 541, §1 (AMD).]

5. Side fund. "Side fund" means a fund other than the Small Enterprise Growth Fund administered by the board that is invested as determined by the board.
[PL 2009, c. 475, §3 (NEW).]

SECTION HISTORY

PL 1995, c. 699, §3 (NEW). PL 1999, c. 504, §2 (AMD). PL 2001, c. 541, §1 (AMD). PL 2009, c. 475, §§1-3 (AMD).

§383. Program funds established

1. Creation of fund. There is established the Small Enterprise Growth Fund, which is a revolving fund used to provide funding for disbursements to qualifying small businesses in the State seeking to pursue an eligible project. The fund must be deposited with and maintained and administered by the Finance Authority of Maine and consists of appropriations provided for that purpose, interest accrued on the fund balance, funds received by the board to be applied to the fund, all funds remaining in the Pine Tree Partnership Fund and any funds received from repayment, interest, royalties, equities or other interests in business enterprises, products or services. The fund is a nonlapsing fund.
[PL 1995, c. 699, §3 (NEW).]

1-A. Creation of side funds. The board may create one or more side funds for placement of certain funds received by the board. A side fund may be structured as a revolving fund in addition to the Small Enterprise Growth Fund or as a fund in which the investor will have funds drawn and returned over an agreed time period.
[PL 2009, c. 475, §4 (NEW).]

2. Administrative expenses. Costs and expenses of maintaining and servicing program funds and administering the Small Enterprise Growth Program established by this chapter may be paid out of amounts in the program funds.
[PL 2009, c. 475, §4 (AMD).]

3. Management fees. The board may charge and accept management fees for management of money placed in program funds other than money placed directly by the State.
[PL 2009, c. 475, §4 (NEW).]

4. Agreements. The board may enter into an agreement or contract with a 3rd party for investment in a side fund. The board may allocate ownership in a side fund through the agreement. The board may also repay money received and return profits according to terms in the agreement. The board may create a formula or terms for the sharing of profits on a side fund in the agreement.
[PL 2009, c. 475, §4 (NEW).]

5. Profits. The profits on a side fund retained by the board must be contributed to the fund.
[PL 2009, c. 475, §4 (NEW).]

SECTION HISTORY

PL 1995, c. 699, §3 (NEW). PL 2009, c. 475, §4 (AMD).

§384. Board

1. Establishment; membership. There is established as a body corporate and politic and a public instrumentality of the State the Small Enterprise Growth Board, which consists of 11 members appointed by the Governor as follows:

A. An experienced commercial lender; [PL 1995, c. 699, §3 (NEW).]

B. An attorney with knowledge of securities law; [PL 1995, c. 699, §3 (NEW).]

C. Five members of the public who have knowledge and experience in managing or investing in high-growth small businesses; [PL 1995, c. 699, §3 (NEW).]

D. Three members of the public who have knowledge and experience in the development of technological innovation; and [PL 1995, c. 699, §3 (NEW).]

E. The Commissioner of Economic and Community Development or the commissioner's designee, who shall serve as a voting ex officio member of the board. [PL 1995, c. 699, §3 (NEW).]
[PL 2005, c. 425, §23 (AMD).]

2. Chair. The board shall annually elect a chair from among its members.
[PL 1995, c. 699, §3 (NEW).]

3. Terms. The members other than the Commissioner of Economic and Community Development or the commissioner's designee serve for 2-year terms and may be reappointed for up to 3 consecutive terms. A member may serve for more than 3 2-year terms if the terms are not consecutive.
[PL 1999, c. 504, §3 (AMD).]

4. Compensation. Members are entitled to compensation in accordance with Title 5, chapter 379.
[PL 1995, c. 699, §3 (NEW).]

SECTION HISTORY

PL 1995, c. 699, §3 (NEW). PL 1999, c. 504, §3 (AMD). PL 2005, c. 425, §23 (AMD).

§385. Duties of board

The board has the following powers and duties. [PL 1995, c. 699, §3 (NEW).]

1. Receipt of money and property. The board may accept and receive gifts, grants, investments, bequests or devises from any source, including funds from the Federal Government or any subdivision of the Federal Government.
[PL 1995, c. 699, §3 (NEW).]

2. Administer program. The board must administer the Small Enterprise Growth Program and may contract with the Finance Authority of Maine, financial institutions, educational institutions, business enterprises, nonprofit institutions and organizations or individuals for such assistance in administering the program as the board may require.
[PL 1995, c. 699, §3 (NEW).]

3. Ownership interests. The board may hold an ownership interest in a private enterprise when it is determined by the board that such an interest is necessary or desirable in order for the fund to obtain a reasonable return on its investment in the private enterprise.
[PL 1999, c. 504, §4 (AMD).]

4. Rules. The board may adopt rules, in accordance with the Maine Administrative Procedure Act, to carry out this chapter.
[PL 1995, c. 699, §3 (NEW).]

SECTION HISTORY

PL 1995, c. 699, §3 (NEW). PL 1999, c. 504, §4 (AMD).

§386. Eligible projects

In order for a qualifying small business to be eligible for financial assistance under the program, the following criteria must be met. [PL 1995, c. 699, §3 (NEW).]

1. Engagement; involvement. The qualifying small business must be engaged in or involve at least one of the following:

A. Marine science; [PL 1995, c. 699, §3 (NEW).]

B. Biotechnology; [PL 1995, c. 699, §3 (NEW).]

C. Manufacturing; [PL 1995, c. 699, §3 (NEW).]

D. Export of goods or services to locations outside the State or activities that result in significant amounts of capital being imported into the State; [PL 1995, c. 699, §3 (NEW).]

E. Software development; [PL 1995, c. 699, §3 (NEW).]

F. Provision or development of environmental services or technologies; [PL 1995, c. 699, §3 (NEW).]

G. Provision or development of financial or insurance products or services; [PL 1995, c. 699, §3 (NEW).]

H. Production of value-added goods from natural resources; or [PL 1995, c. 699, §3 (NEW).]

I. Other enterprises that the board determines will further the purposes and intent of the program, including, but not limited to, retail sales, tourism and agricultural production. [PL 1995, c. 699, §3 (NEW).]

[PL 1995, c. 699, §3 (NEW).]

2. Growth; public benefit. The qualifying small business must demonstrate the potential for high growth and public benefit.
[PL 1995, c. 699, §3 (NEW).]

3. Need for assistance. The qualifying small business must provide evidence of each of the following:

A. Commitment of all reasonably available resources to the project; [PL 1995, c. 699, §3 (NEW).]

B. A need for financial assistance from the fund to realize its projected growth and achievement of public benefits; and [PL 1995, c. 699, §3 (NEW).]

C. [PL 1999, c. 504, §5 (RP).]

[PL 1999, c. 504, §5 (AMD).]

4. Financing plan. The qualifying small business must submit a financing plan as part of an overall business plan. The proposed financing plan must include adequate mechanisms to monitor the accomplishment of the business plan as proposed.

[PL 1995, c. 699, §3 (NEW).]

The disbursement may not be used to make distributions to or for the benefit of an owner of the business borrowing from the fund or a related entity. [PL 1995, c. 699, §3 (NEW).]

SECTION HISTORY

PL 1995, c. 699, §3 (NEW). PL 1999, c. 504, §5 (AMD).

§387. Review of applications

In order to effectively review and process applications under the program, the board may delegate the authority to deny applications for disbursements from the fund to one or more subcommittees of the members. Such delegation may provide that the action of the subcommittee constitutes final agency action. The board may delegate authority to recommend approval of applications, but final approval may be given only by the board. [PL 1995, c. 699, §3 (NEW).]

SECTION HISTORY

PL 1995, c. 699, §3 (NEW).

§388. Financing terms and conditions

Disbursements may be made from program funds under the following terms and conditions. [PL 1995, c. 699, §3 (NEW).]

1. Disbursements. Initial disbursements may not exceed $500,000 to a qualifying small business, including an affiliated entity. An initial disbursement plus any subsequent disbursements in the aggregate to a qualifying small business may not exceed an amount equal to 10 percent of the capitalization of the fund from all appropriations received for application to the fund, plus any funds received from repayment, interest, royalties, equities or other interests in business enterprises, products or services to the extent the repayment, interest, royalties, equities or other interests are in excess of the amount initially invested in the business making the payments, plus interest accrued on the fund balance and other funds received by the board to be applied to the fund. The board shall report annually by December 20th of each year to the joint standing committee of the Legislature having jurisdiction over business and economic development matters on all disbursements made under this subsection.

[PL 2001, c. 541, §2 (AMD).]

2. Provide evidence. The qualifying small business shall provide evidence satisfactory to the board that the small business has obtained or will obtain, prior to the board's disbursement, matching funds in an amount at least equal to the board's investment in the form of debt or equity that is at risk in the small business.

[PL 1999, c. 504, §7 (RPR).]

3. Agreement. The board must enter into an agreement with the recipient of the disbursement setting forth the terms of repayment of the fund's investment in the recipient. This agreement may include such terms and conditions as the board determines will provide a reasonable return on its investment taking into consideration the risk of the investment. These terms and conditions may include one or more of the following:

A. Repayment of the full amount disbursed; [PL 1999, c. 504, §7 (NEW).]

B. Payment of interest based on the board's assessment of the risk of the investment; [PL 1999, c. 504, §7 (NEW).]

C. Payment of return based on the board's ownership interest in the recipient; [PL 1999, c. 504, §7 (NEW).]

D. Flexible payments based on the financial success of the recipient; [PL 1999, c. 504, §7 (NEW).]

E. Royalties or additional payments based on sales, net cash flow or other financial measures; [PL 1999, c. 504, §7 (NEW).]

F. Rights to equity in the enterprise in the form of warrants or similar rights; or [PL 1999, c. 504, §7 (NEW).]

G. Such other terms and conditions as the board determines are appropriate for the investment. [PL 1999, c. 504, §7 (NEW).]

[PL 1999, c. 504, §7 (RPR).]

4. Report. The board shall require that each disbursement recipient report to the board at least annually on each of the following factors:

A. Financial performance; [PL 1995, c. 699, §3 (NEW).]

B. Job creation; [PL 1995, c. 699, §3 (NEW).]

C. Technological progress; [PL 1995, c. 699, §3 (NEW).]

D. Market progress; and [PL 1995, c. 699, §3 (NEW).]

E. Any other factors as the board may require. [PL 1995, c. 699, §3 (NEW).]

[PL 1995, c. 699, §3 (NEW).]

SECTION HISTORY

PL 1995, c. 699, §3 (NEW). PL 1999, c. 504, §§6,7 (AMD). PL 2001, c. 541, §2 (AMD).

§389. Cooperation and coordination

The University of Maine System, the Small Business Development Center Program, the Maine World Trade Association and the Maine Science and Technology Foundation shall provide such support and assistance as the board may request, within the expertise of each. [PL 1995, c. 699, §3 (NEW).]

SECTION HISTORY

PL 1995, c. 699, §3 (NEW).

§390. Conflicts of interest

Notwithstanding Title 5, section 18, subsection 1, paragraph B, each member of the board, and each employee, contractor, agent or other representative of the board is deemed an "executive employee" solely for purposes of Title 5, section 18, and for no other purpose. Title 17, section 3104 does not apply to any of those representatives. If a member does not participate in an action or deliberation with respect to a particular project, that member is presumed not to have personally and substantially

participated in a decision of the board with respect to that project. Every interest of a board member in any matter before the board must be disclosed to the board in writing. [PL 1995, c. 699, §3 (NEW).]

SECTION HISTORY

PL 1995, c. 699, §3 (NEW).

§391. Disclosure and confidentiality of records

1. Disclosure required. Notwithstanding subsections 2 and 3, and except as provided in paragraph F, the board shall make available the following records, either to any person upon a request that reasonably describes the records to which access is sought or, if no request is made, in any manner and at any time that the board may determine:

A. After a written application or proposal for financial assistance or property transfer has been filed in a form specified by or acceptable to the board:

(1) Names of recipients of or applicants for financial assistance, including principals, where applicable;

(2) Amounts, types and general terms of financial assistance provided to those recipients or requested by those applicants;

(3) Description of projects and businesses benefiting or to benefit from the financial assistance;

(4) Names of transferors or transferees, including principals, of property to or from the board, the general terms of transfer and the purposes for which transferred property will be used; and

(5) Number of jobs and the amount of tax revenues projected and resulting from a project; [PL 1995, c. 699, §3 (NEW).]

B. Any information pursuant to a waiver determined satisfactory by the board; [PL 1995, c. 699, §3 (NEW).]

C. Information that, as determined by the board, has already been made available to the public; and [PL 1995, c. 699, §3 (NEW).]

D. Information necessary to comply with Title 1, section 407, subsection 1. [PL 1995, c. 699, §3 (NEW).]

The board shall provide to a legislative committee the information or records specified in a written request signed by the chair of that legislative committee. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by it.
[PL 1995, c. 699, §3 (NEW).]

2. Confidential information. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Any record obtained or developed by the board prior to receipt of a written application or proposal, in a form specified by or acceptable to the board, for financial assistance to be provided by or with the assistance of the board or in connection with a transfer of property to or from the board. After receipt by the board of the application or proposal, a record pertaining to the application or proposal may not be considered confidential unless it is confidential under another provision of this subsection; [PL 1995, c. 699, §3 (NEW).]

B. Any record obtained or developed by the board that:

(1) A person, including the board, to whom the record belongs or pertains has requested be designated confidential; and

(2) The board has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through board records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the board in the case of a person other than the board, to any person to whom the record belongs or pertains; [PL 1995, c. 699, §3 (NEW).]

C. Any financial statement or tax return of an individual or any other record obtained or developed by the board the disclosure of which would constitute an invasion of personal privacy, as determined by the board; [PL 1995, c. 699, §3 (NEW).]

D. Any record, including any financial statement or tax return obtained or developed by the board in connection with any monitoring or servicing activity by the board, pertaining to any financial assistance provided or to be provided by or with the assistance of the board; [PL 1995, c. 699, §3 (NEW).]

E. Any record obtained or developed by the board that contains an assessment by a person who is not employed by the board of the creditworthiness or financial condition of any person or project; and [PL 1995, c. 699, §3 (NEW).]

F. Any financial statement or business and marketing plan in connection with any project receiving or to receive financial assistance from the board, if a person to whom the statement or plan belongs or pertains has requested that the record be designated confidential. [PL 1995, c. 699, §3 (NEW).]

[PL 1995, c. 699, §3 (NEW).]

3. Wrongful disclosure prohibited. A member, officer, employee, agent, other representative of the board or other person may not knowingly divulge or disclose records declared confidential by this section, except that the board may, in its discretion, make or authorize any disclosure of information of the following types or under the following circumstances:

A. Impersonal, statistical or general information; [PL 1995, c. 699, §3 (NEW).]

B. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person or in connection with acquiring, maintaining or disposing of property; [PL 1995, c. 699, §3 (NEW).]

C. To a financing institution or credit reporting service; [PL 1995, c. 699, §3 (NEW).]

D. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance; [PL 1995, c. 699, §3 (NEW).]

E. If necessary to ensure collection of any obligation in which it has or may have an interest; [PL 1995, c. 699, §3 (NEW).]

F. In any litigation or proceeding in which the board has appeared, introduction for the record of any information obtained from records declared confidential by this section; and [PL 1995, c. 699, §3 (NEW).]

G. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority. [PL 1995, c. 699, §3 (NEW).]

[PL 1995, c. 699, §3 (NEW).]

SECTION HISTORY

PL 1995, c. 699, §3 (NEW).

§392. Governmental function

The board shall administer and exercise the authority granted to it by this chapter. The carrying out of its powers and duties is considered the performance of an essential governmental function. [PL 1995, c. 699, §3 (NEW).]

SECTION HISTORY

PL 1995, c. 699, §3 (NEW).

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