

Act 623 of the 1989 Regular Session.

Act 623

SB346

By: Senator Bradford

"AN ACT AUTHORIZING THE CREATION OF A SMALL BUSINESS REVOLVING LOAN FUND FOR THE PURPOSE OF ISSUING DIRECT LOANS AND GUARANTYS OF OBLIGATIONS OF THE AUTHORITY; PRESCRIBING OTHER MATTERS RELATING THERETO; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. This Act may be referred to and cited as the "Arkansas Development Finance Authority Small Business Act of 1989."

SECTION 2. LEGISLATIVE FINDINGS AND DECLARATION OF PUBLIC NECESSITY. The General Assembly hereby finds:

(a) That there exists severe economic instability in traditional national and international markets for goods and services produced by the citizens of the State of Arkansas. This instability has caused serious economic distress among the citizens of the State and is manifest in the increasing number of business failures and bankruptcies, both personal and corporate, and the extraordinarily high levels of unemployment. The continued existence of these conditions is inimical to the public health, welfare, safety, morals and economic security of the citizens and inhabitants of the State.

(b) That the economic well being of the citizens of the State of Arkansas will be enhanced by providing affordable financing to small business enterprises in Arkansas.

For these reasons, the General Assembly hereby finds that there exists in the State an immediate and urgent need to provide the means and methods for providing financing and enhancing and supporting the credit of such financing;

(i) To promote and develop the expansion of existing and the establishment of new small business enterprises for the purpose of further alleviating unemployment within the State and for providing additional employment;

(ii) To promote and target the resources of the State by leveraging available loan funds through participations with local financial institutions in Arkansas and with agencies of the U.S. Government;

(iii) To promote and target resources of the State to further the development of export trade of Arkansas products for the purpose of the economic development of the State and for providing additional employment therefrom;

(iv) To target resources of the State toward the development and expansion of technology-oriented small business enterprises.

It is hereby declared to be the public policy and responsibility of this State to promote the health, welfare, safety, morals and economic security of its inhabitants through the retention of existing employment and alleviation of unemployment in all phases of agricultural business and industrial enterprises.

The General Assembly finds that the public policies and responsibilities of the State as set forth in this Section cannot be fully attained without the use of public financing and that such public financing can best be provided by the creation of a Small Business Revolving Loan Fund.

SECTION 3. As used herein, unless the context otherwise requires,

(a) "Act" shall mean the Arkansas Development Finance Authority Bond Small Business Act of 1989.

(b) "ADFA Guarantys" shall mean a special obligation of the Small Business Revolving Loan Fund.

(c) "ADFA Loans" shall mean direct loans from the Small Business Revolving Loan Fund or from direct loans made by the Authority in accordance with provisions of the Arkansas Development Finance Authority Act.

(d) "Agencies of the U.S. Government" shall mean federal agencies empowered to make direct loans and provide guarantys backed by the U.S. Government.

(e) "Amortization payments" shall mean periodic (monthly, semi-annual, annual, etc.) payment of interest on, and installments of principal of loans guaranteed by the Small Business Revolving Loan Fund.

(f) "Authority" shall mean the Arkansas Development Finance Authority.

(g) "Board" shall mean the Board of Directors of the Authority.

(h) "Local Financial Institutions" shall mean state and local agencies, banks, Arkansas savings and loans, Arkansas development finance corporations and Arkansas certified development corporations.

(i) "Project" shall mean the project for which proceeds of ADFA loans are utilized.

(j) "Small Business", for the purpose of this Act, shall mean business enterprises with fewer than fifty (50) employees and less than \$1,000,000 in gross sales or receipts.

(k) "Small Business Person" shall mean the individual, firm or corporation, whether for profit or non-profit, charged with developing the project.

(l) "Small Business Revolving Loan Fund" shall mean the fund created hereunder for the purpose of making direct loans and meeting amortization payments of loans guaranteed by the small Business Revolving Loan Fund.

(m) "State" shall mean the State of Arkansas.

SECTION 4. AUTHORITY EMPOWERED TO GRANT OR DENY APPLICATIONS. The Arkansas Development Finance Authority (the "Authority"), in addition to all the duties and functions defined in the Arkansas Development Finance Authority Act, is hereby empowered to approve or deny by majority vote of the Board of Directors of the Authority the applications for direct loans and guarantys of obligations.

SECTION 5. WHEN LOANS MAY BE FUNDED OR GUARANTEED -- STANDARDS AND REGULATIONS FOR EVALUATION. Loans may be funded or guaranteed when:

(a) The Authority deems the utilization of a loan guaranty in the best interest of the economic development of the State of Arkansas;

(b) The amount of guaranteed loans for which the Small Business Revolving Loan Fund is sufficient to pay debt service requirements of all such loans currently outstanding and payable in the current calendar year.

(c) The Small Business Person is found to be financially responsible, and that sufficient income may reasonably be expected to amortize in an orderly manner amortization payments of the loan.

(d) Participation is required by a financial institution in the financing package necessary to accomplish the Project. Participation may range from 10 percent to 50 percent depending upon the project and the requirement for funding.

The Authority shall promulgate standards and regulations for the evaluation of the financial condition and business history of Small Business Person, and may require the attachment to each application for a loan or guaranty under this Act a financial report and evaluation by an independent

certified public accountant firm, in addition to such examination and evaluation as the Authority may make, in determining whether the Small Business Person meets prescribed minimum standards and qualifications before entering into any guaranty under this Act.

SECTION 6. SMALL BUSINESS REVOLVING LOAN FUND -- INVESTMENT OF FUNDS. The Authority is authorized to establish a Bond Guaranty Reserve Account (herein sometimes referred to as "Guaranty Account") in an Arkansas financial institution (or institutions) that is a member of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, which account shall be in the name of the Authority and the amount thereof in excess of that insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation must be secured by, and the Authority is hereby authorized to invest Guaranty Reserve Accounts Funds in, (i) direct obligations of, or obligations which are guaranteed by, the United States of America, (ii) obligations, debentures, notes or other evidences of indebtedness issued or guaranteed by any of the following: Bank for Cooperatives; Federal Intermediate Credit Bank; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Financing Bank; Federal Land Bank; Federal National Mortgage Association; Farmers Home Administration; Federal Home Loan Corporation; Government National Mortgage Association; Federal Housing Administration, (iii) repurchase agreements with financial institutions, acting as principal or agent, for securities described in (i) and (ii) above, if such securities are delivered to the Authority or trustee on its behalf, (iv) obligations issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America, or temporary notes, preliminary loan notes, or project notes issued by public agencies or municipalities, in each case fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America, (v) in certificates of deposit or time deposits or similar banking arrangements with a bank or banks insured by the Federal Deposit Insurance Corporation, or savings and loan association or associations insured by the Federal Savings and Loan Insurance Corporation, (vi) investment agreements, capital notes or banking arrangements with financial institutions (or holding companies thereof) approved by the Board of Directors of the Authority; and to provide for the sale of any such investment and for the reinvestment of the proceeds thereof.

All monies received by the Authority under and pursuant to the provisions of this Act shall be deposited as and when received in the Small Business Revolving Loan Fund. It is the intent of this Act that idle funds in the Small Business Revolving Loan Fund shall be invested as provided herein, in order that maximum interest return may be received by the Small Business Revolving Loan Fund.

All monies now or hereafter deposited in, or paid to the Authority for deposit in, the Small Business Revolving Loan Fund are hereby specifically declared to be cash funds, received from sources other than taxes, restricted in their use, and shall not be deposited in the State Treasury, but shall be deposited in one or more banks, as set forth above.

SECTION 7. EVIDENCE TO SUPPORT GUARANTY REQUIRED -- REVIEW OF APPLICATIONS.

(a) Each Small Business Person requesting a loan or guaranty hereunder shall submit to the Arkansas Development Finance Authority an application supporting documents, instruments, and other evidence showing conformity with the Arkansas Development Finance Authority Act as hereinabove identified.

(b) All applications filed with the Arkansas Development Finance

Authority under the provisions of this Act shall first be reviewed by the appropriate designated staff officials of the Authority and/or by a committee consisting of members of the Authority for preliminary review and recommendation prior to being submitted for consideration by the Authority. All applications submitted to the Authority, and all supporting documents, instruments, proposed contracts, estimated costs, or other evidence submitted therewith shall be confidential and shall not be open to public review except as provided herein, and all staff meetings and/or meetings of the review committee of members of the Authority established for the purpose of giving preliminary review of such applications, shall be confidential and shall not be open to the public. Upon conclusion of the preliminary review of each request hereunder, if the request is submitted to the Authority with a recommendation that it be approved, the application and all supporting documents, including the findings and the recommendations resulting from the staff and/or review committee thereof, shall be an open public record available for inspecting during all regular business hours. In the event that an application from a Small Business Person hereunder is not recommended for approval by the Authority hereunder, that application and all supporting documents, including all findings and recommendations in regard thereto by the staff and/or review committee, shall continue to be confidential and not open to public inspection. The Small Business Person shall be notified in writing of any staff and/or review committee determination that the application is not being submitted to the Authority with a recommendation that it be approved, which notice shall advise that the Small Business Person that the application will be kept confidential unless the Small Business Person shall, within thirty (30) days from the date of receipt of the written notice, file a petition with the Authority requesting that the Authority hold a hearing in regard to the application, in which event the application and all supporting documents shall become public information available for public inspection.

The membership of a review committee, when acting in that capacity, shall never be considered to constitute a quorum of the Authority for the purpose of approving an application for guaranty hereunder.

No provision of this Section shall be interpreted to create any private right against any member of the Authority or any member of the staff thereof.

SECTION 8. GRANTS TO FUND. The Authority is hereby authorized to accept grants to its Small Business Revolving Loan Fund from any state or federal agencies, municipalities, corporations, foundations, individual donees, or authorities.

SECTION 9. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 10. EMERGENCY CLAUSE. It is hereby found and determined by the Seventy-Seventh General Assembly that there is an urgent need to provide affordable financing to small business enterprises in Arkansas and that the Arkansas Development Finance Authority possesses the expertise and resources to establish and administer a Small Business Revolving Loan Fund Program. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1989.

APPROVED: March 16, 1989

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