

**PART II. WORKFORCE AND TECHNOLOGY
DEVELOPMENT**

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CHAPTER 41. SMALL BUSINESS INCUBATOR PROGRAM

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Authority

The provisions of this Chapter 41 issued under section 7 of the Small Business Incubators Act (73 P. S. § 395.7), unless otherwise noted.

Source

The provisions of this Chapter 41 adopted January 9, 1987, effective January 10, 1987, 17 Pa.B. 171; renumbered from 13 Pa. Code Chapter 69, May 16, 1997, effective May 17, 1997, 27 Pa.B. 2415. Immediately preceding text appears at serial pages (113861) to (113870) and (120841).

§ 41.1. Scope.

This chapter delineates the general requirements and conditions for participation in the Small Business Incubator Program established under the act. More specific information concerning the requirements for application and participation is found in an applicant manual that may be obtained from the Board by writing to: Ben Franklin/IRC Partnership, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, Pennsylvania 17120 (717) 787-4147.

§ 41.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—Small Business Incubators Act (73 P. S. §§ 395.1—395.12).

Advanced Technology Center (ATC)—One of the four Ben Franklin Technology Centers receiving funding under the act of July 2, 1993 (P. L. 439, No. 64) (73 P. S. §§ 400.1—400.21), known as the Ben Franklin/IRC Partnership Act.

Anchor tenant—A tenant other than a retail enterprise which has an incubator lease of more than 2 years.

Board—The Board of the Ben Franklin/IRC Partnership Fund, as established by the Ben Franklin Partnership Act.

Business development services—Physical, financial and management assistance offered to incubator tenants.

Departure procedure—Policies established by the local sponsor governing when a tenant will move from the incubator and locate in its own building or in leased industrial or commercial space. The policies include, but are not limited to, a regular review of tenant ability to depart from the incubator and to operate successfully outside the incubator.

Distressed community—A community designated as distressed by the Department.

Eligible project costs—Those costs for which funds awarded by the Board may be used, including costs for the acquisition of existing buildings and land, the rehabilitation of buildings or other facilities and the purchase of equipment and furnishings necessary for the establishment of the incubator.

Entry procedure—Policies established by the local sponsor regarding the conditions under which businesses will be accepted in the incubator. The policies include, but are not limited to, a regular review of prospective tenant eligibility.

Incubator—A facility in which small units of space may be leased by tenants at low cost, in which the local sponsor maintains or provides access to business development services for use by the tenants, and in which the local sponsor maintains tenant entry and departure procedures.

Local advisory committee—A committee established by the local sponsor to advise in the development and operation of the incubator, particularly in establishing entry and departure procedures and reviewing business development services provided to incubator tenants.

Local sponsor—An organization that enters into a written agreement with the Board to establish, operate and administer a small business incubator and that is responsible for compliance with the terms and conditions of a loan agreement, including loan repayment, or a grant agreement, or both. Eligible local sponsors include municipalities, local development districts of the Appalachian Regional Commission, industrial and commercial development authorities established under the Industrial and Commercial Development Authority Law (73 P. S. §§ 371—385), redevelopment authorities established under the Urban Redevelopment Law (35 P. S. §§ 1701—1747), municipal authorities established under the Municipality Authorities Act of 1945 (53 P. S. §§ 301—401) and industrial development corporations or private nonprofit or for-profit orga-

nizations that can demonstrate to the Board that they possess the management capability and financing to meet the objectives of this program.

Manufacturing—An enterprise engaged in giving new shapes, new qualities or new combinations to matter by the application of skill and labor.

Mixed use—Incubator facilities that house tenants engaged in manufacturing, product development and research and development or a combination of these activities.

Nonprofit enterprise—An organization organized as a domestic corporation not-for-profit, or an organization that has been issued a certificate of authority from the Department of State to conduct business in this Commonwealth as a foreign corporation not-for-profit under 15 Pa.C.S. §§ 7101—7990 (relating to corporation not-for-profit code), or an organization that holds an exemption under section 501(c)(3) of the Internal Revenue Code (26 U.S.C.A. § 501(c)(3)) from the United States Treasury Department, including a government agency or charitable organization.

Nonprofit research and development enterprise—A nonprofit enterprise that is principally engaged in conducting research in technology or technical areas with the intent of offering the results of that research to for-profit enterprises for commercial use.

Operator—An organization that provides day-to-day management of an incubator.

Personal service enterprise—An organization that sells or provides a service, rather than a good, to a final user. The term includes, but is not limited to, travel agents, real estate brokers and barbers.

Product development—The production or development of new products, processes and technologies. The term includes but is not limited to, electronic information processing and more efficient production processes.

Professional enterprise—An organization that provides a professional or technical service, rather than a good or personal service, to a business for use in that business. The term includes, but is not limited to, accountants, lawyers and consultants.

Program—Small Business Incubator Program.

Retail enterprise—A commercial operation that sells goods purchased from another firm directly to a final user.

Tenant—A sole proprietorship, business partnership or corporation operating a business for profit, or a nonprofit research and development enterprise or other organization that is eligible as a tenant under § 41.7 (relating to tenant eligibility), which leases or otherwise occupies space in an incubator.

Wholesale enterprise—A commercial operation that sells goods purchased from another firm to retail enterprises or other nonfinal users.

§ 41.3. Application.

(a) *Application.* Participation in the program shall be initiated by local sponsors by application on forms prescribed by the Board. The Board is specifically authorized to develop forms, applicant manuals and other materials as may be reasonably necessary for administration of the program.

(b) *Information required.* Local sponsors wishing to establish a small business incubator shall supply the Board with the following information:

- (1) A demonstration of need for the incubator through the preparation and submission of a feasibility report.
- (2) An explanation of whether the incubator is designed for manufacturing, product development, research and development or mixed use.
- (3) A description of the building to be used for the incubator and documentation, including zoning and ownership, pertaining thereto.
- (4) A description of the management of the incubator and the marketing plan to be used to recruit businesses to the incubator.
- (5) Financial statements of the local sponsor and, if the local sponsor is a private for-profit organization, of the principal owners or shareholders, as required by the Board.
- (6) Letters of commitment to finance the incubator from other financing sources and identification of the use of the financing.
- (7) Membership of the local advisory committee and the committee's policies, including entry and departure procedures for the incubator.
- (8) A description of business development services that will be offered and identification of the provider of the services.
- (9) Certification that the local sponsor, operator and tenants will not discriminate against an employe or applicant for employment on the basis of race, religion, color, national origin, sex or age.
- (10) The identity of the anchor tenant, if any, and at least two firms that are prepared to move into the incubator once space is available.
- (11) Other information or documentation required by the Board.

§ 41.4. Application review and awards.

(a) *Review of application.* The Board will review applications based on the following criteria:

- (1) The ability of the local sponsor to demonstrate its management capability.
- (2) The economic impact of the incubator on the community as measured by the number of firms that could be housed in the proposed facility, the job creation potential of the firms, the actual need for the type of space and services offered by the incubator and other factors that are identified in a feasibility report.

(3) Linkage with area-wide and local economic development plans including the regional strategy of the ATC serving the geographic area in which the incubator is located.

(4) The location of the incubator, in order to encourage geographic distribution of incubators across this Commonwealth.

(5) The level, quality and long-term commitment of local support for the proposed incubator.

(6) The ability of the local sponsor to meet the financial commitments of operating an incubator, including repayment of a small business incubator loan and repayment of other financial obligations incurred in establishing the facility. In evaluating this criterion, the Board will consider:

(i) Equity of the local sponsor in relation to total project cost.

(ii) Income in relation to total project cost.

(iii) Extraordinary items of income and expenses reflected in income statement.

(iv) Cash flow in relation to project debt service.

(v) Current working capital.

(vi) Total debt to equity ratio.

(vii) Net income, contingent liabilities and the ability to finance the working capital.

(7) Availability of physical, financial and management support services.

(8) The extent to which the incubator serves an economically distressed area or an enterprise development area.

(b) *Limitation on awards.* The Board will award loans and grants up to the limit of available funds. If funds are not available, the Board will consider additional applications but will not make awards until additional funds are available.

§ 41.5. Responsibilities of local sponsor.

A local sponsor shall comply with the following:

(1) The local sponsor may operate the small business incubator or it may delegate this responsibility to an operator. Funds awarded to the local sponsor may be provided to the operator by the local sponsor but the local sponsor shall remain ultimately responsible for compliance with the terms and conditions of loan agreement, including loan repayment, and a grant agreement, and for all aspects of the operation of the small business incubator.

(2) The local sponsor shall either own or lease the building housing the incubator. If leased, the local sponsor shall obtain an option to purchase the building and shall exercise the option within 3 years of loan application.

(3) Management of the physical development of the incubator is the responsibility of the local sponsor. Physical development includes common conference rooms or meeting space, furniture and equipment and business services as specified in § 41.6 (relating to business development services).

(4) The local sponsor shall develop a plan to market the incubator to eligible tenants and shall actively execute the plan. As part of the plan, the local sponsor shall address how tenant competition will affect existing private firms in the area.

(5) The local sponsor shall establish and maintain contact with the ATC that serves the area in which the incubator is located.

(6) The local sponsor is responsible for establishing a local advisory committee. Advisory committee members may not be affiliated financially with the local sponsor or a tenant of the incubator, and shall represent fields that can contribute to the operation of the facility, such as accounting, financial, legal, academic and small business. The number of members to serve on the committee is at the discretion of the local sponsor.

(7) The local sponsor, in conjunction with the local advisory committee shall:

(i) Develop policies for admission of a firm as an incubator tenant. The entry policies shall specify types of eligible firms, procedures for reviewing admission applications, criteria for evaluating applicants and permissible tenant activities. A substantial change in entry procedures shall be submitted to the Board for approval.

(ii) Establish policies governing the operation and administration of the incubator.

(iii) Develop policies for the departure of tenants from the incubator. Departure policies shall establish standards against which a tenant's growth will be measured to determine if a tenant can successfully operate outside of the incubator. A substantial change in departure procedures shall be submitted to the Board for approval.

§ 41.6. Business development services.

(a) *General.* The local sponsor shall establish and maintain basic business development services for incubator tenants. The local sponsor shall initially attempt to obtain basic business development services through ATCs, the Small Business Development Centers and the Local Development Districts.

(b) *User fees.* Basic business development services for which a user fee may be charged include:

(1) Physical services:

- (i) Security.
- (ii) Janitorial/maintenance.
- (iii) Furniture.
- (iv) Conference room.

(2) General management services:

- (i) Mail.
- (ii) Copier.
- (iii) Clerical/receptionist.

- (iv) Computer access.
- (c) *No user fee.* The following basic business development services shall be available to tenants without charge on a limited basis:
 - (1) Financial services:
 - (i) Insurance counseling.
 - (ii) Technical assistance in applying for government loans and grants.
 - (iii) Technical assistance in applying for equity and debt financing.
 - (2) Management services:
 - (i) Assistance in the preparation of business plans.
 - (ii) Assistance in the preparation of relocation plans.
 - (iii) Assistance in using computing and information processing.
- (d) *Additional services.* The local sponsor may offer other business development services to tenants and the services may be included in an extended package of services or billed separately to the user.
- (e) *No liability.* No local sponsor or operator is liable to incubator tenants for advice offered or assistance provided as part of basic business development services.

Cross References

This section cited in 12 Pa. Code § 41.5 (relating to responsibilities of local sponsor).

§ 41.7. Tenant eligibility.

- (a) *General.* Except as provided in subsection (c), tenants of the incubator shall be recently established small firms engaged in manufacturing, product development, research and development, professional services or some combination of these activities.
- (b) *Limitations.* Except as provided in subsection (c), retail enterprises, nonprofit enterprises—except for nonprofit research and development enterprises—wholesale enterprises and personal service enterprises are not eligible tenants.
- (c) *Exceptions.* The following types of organizations or enterprises may be eligible tenants for an incubator under the conditions specified:
 - (1) Local sponsors or operators that are nonprofit organizations may occupy space in the incubator but only space as is necessary to manage the incubator and provide services to tenants.
 - (2) Nonprofit enterprises, such as Small Business Development Centers, whose primary mission is to provide business development services, may be located in the incubator if they provide a substantial portion of their services to incubator tenants.
 - (3) Established law and accounting firms that provide pro bono services to incubator tenants may be tenants of the incubator.
 - (4) Anchor tenants may be an enterprise other than a retail enterprise and may occupy up to a total of 20% of the useful square footage of an incubator.

(d) *Policies of incubators.* Incubator tenants shall conform to policies established by the local sponsor, including policies pertaining to entry into and departure from the incubator. Anchor tenants are exempt from departure procedures.

Cross References

This section cited in 12 Pa. Code § 41.2 (relating to definitions).

§ 41.8. Loan and grant conditions.

(a) *General conditions.* The following conditions are applicable to awards of both loans and grants:

(1) The aggregate amount of funds awarded by the Board for a project may not exceed 50% of the total eligible project costs or \$650,000—whichever is less.

(2) Funds awarded may be used only for the acquisition of existing buildings and land, the rehabilitation of buildings or other facilities and the purchase of equipment and furnishings necessary for the establishment of the incubator.

(3) Funds awarded may not be used for operating expenses, incubator feasibility studies or management fees for facility management.

(4) The local sponsor, at its expense, shall obtain the services of a professional engineer or architect licensed in this Commonwealth who will certify to the Board during building renovations that the expenses were incurred and were in accordance with plans approved by the Board.

(5) As a condition to receiving a loan or grant, the local sponsor shall agree to operate the incubator in accordance with the act and this chapter and the guidelines for the small business incubator program adopted by the Board.

(6) The Board may award the full amount of a loan or grant requested, but it reserves the right to award an amount less than the amount requested.

(b) *Additional conditions for loans.* Loans approved by the Board are also subject to the following conditions:

(1) Loans may be for a term of 10 years or the average useful life of the property as established by the United States Internal Revenue Service, whichever is greater, but the term may not be greater than 20 years. The average useful life shall be calculated using the mid-point life listed in the table of Asset Guideline Classes, IRS Publication # 534 (entitled *Depreciation*).

(2) Loan repayments may be deferred by the Board for up to 2 years. A deferral may be requested either at the time of the loan application or during the course of the loan repayment period. During a deferral period, interest shall continue to accrue and shall be added to the principal. The original term of the loan shall remain unchanged.

(3) The interest rate on loans will be set periodically by the Secretary and will be published as a notice in the *Pennsylvania Bulletin*.

(4) Funds loaned shall be secured by lien positions on collateral at the highest level of priority which can accommodate the local sponsor's ability to raise sufficient debt and equity capital.

(5) Loan agreements entered into between the local sponsor and the Board will set forth the conditions that constitute default, and will detail the remedies available to the Board if this circumstance arises.

(6) The Board may impose other conditions as it deems necessary in order to fulfill the purposes of, and its responsibilities under, the act.

(c) *Additional conditions for grants.* Grants awarded by the Board shall also be subject to the following conditions:

(1) Grants awarded under the small business incubator program may not exceed \$240,000.

(2) Grants shall be awarded only for incubators proposed to be located in distressed communities.

(3) Grant agreements entered into between the local sponsor and the Board will set forth the conditions under which the grant may be terminated and the grant repaid wholly or partially to the Board, and will specify other remedies available to the Board.

(4) The Board may consider an application for a grant as an application for a loan.

(5) The Board may impose other conditions as it deems necessary in order to fulfill the purposes of and its responsibilities under the act.

(d) *Certificate of Occupancy.* Before the incubator is occupied, the local sponsor shall submit to the Board a copy of the Certificate of Occupancy issued by the Department of Labor and Industry or, if the incubator is located in the cities of Philadelphia, Pittsburgh or Scranton, the similar document issued by the building inspection office of the respective city.

(e) *Conformance to building codes.* Before the incubator is occupied, the local sponsor shall submit a document to the Board from the appropriate jurisdiction certifying that the building conforms to applicable building and energy codes.

§ 41.9. Monitoring.

The performance of the local sponsor, and the incubator operator when applicable, will be monitored by the ATC serving the geographical area in which the incubator is located. The Board will monitor loan agreements and contracts between the Board and local sponsors for compliance with applicable program requirements.

§ 41.10. Reporting.

A local sponsor that has received a loan to establish an incubator shall submit an annual report to the Board on or before January 31 of each year for the previous calendar year. The following shall be included in the report:

- (1) A financial statement for the incubator signed by a Certified Public Accountant.
- (2) A list of tenants of the incubator during the calendar year, their entry or departure date, or both, and the date of lease renewals.
- (3) Evidence that a tenant meets the eligibility requirements of the act and this chapter.
- (4) The number of jobs provided by a tenant.
- (5) The occupancy rate of the incubator—percentage of rentable square footage—during the calendar year.
- (6) A report on the current status of firms that have left the incubator since the establishment of the incubator, including their current employment figures and product line.

§ 41.11. Waiver.

The Board may waive the requirements of this chapter if it determines that a waiver is necessary to fulfill the purpose of the program and the waiver does not conflict with the act.

§ 41.12. Sunset.

Under section 12 of the act (73 P. S. § 395.12) no incubator loans, loan guarantees or grants may be approved by the Board after June 30, 1987.

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