

Chap. 865. AN ACT ESTABLISHING THE MASSACHUSETTS INDUSTRIAL MORTGAGE INSURANCE AGENCY.

Be it enacted, etc., as follows:

SECTION 1. Chapter 23A of the General Laws, as most recently amended by chapter 826 of the acts of 1974, is hereby further amended by adding after section 28 the following seven sections:—

Section 29. It is hereby found that the high cost as well as the lack of availability of industrial loans for small business makes it extremely difficult for the thousands of these industrial enterprises in Massachusetts to hold their present employment levels or to expand employment.

It is further found that as a result of the continuing increase in the cost of construction or rehabilitation, municipal taxes, heating and electricity expense, maintenance and repair expenses and the cost of land, the commonwealth suffers from structural economic weaknesses which contribute to a rising level of chronic unemployment and underemployment.

It is further found that the lack of gainful employment puts additional pressure on the state's welfare programs and increases the cost of unemployment compensation to the existing enterprises of the commonwealth.

Therefore, it is in the best public interest of the commonwealth to promote the prosperity and general welfare of all citizens by stimulating industrial growth and expansion by encouraging a larger flow of private investment funds from banks, investment houses, insurance companies and other financial institutions, including pension retirement funds, to help satisfy the need for industrial expansion. The creation of a Massachusetts Industrial Mortgage Insurance Agency would encourage the making of industrial loans by an insurance program for the public purpose of furthering industrial expansion in the commonwealth.

The advantages of this program to the general public would include an increase in the gainful employment of the citizens; a decrease in welfare and unemployment compensation costs; an increase in the tax base of the commonwealth; an increase in the availability of capital for small enterprises in the commonwealth; an increase in the inventory of industrial sites and modern industrial buildings suitable to house new or expanding industrial enterprises; the expansion, reclamation or renovation of existing buildings to house new or expanding industrial and recreational enterprises and lower cost capital for the abatement of industrial air and water pollution and general improvement of the disposal of industrial waste.

Section 30. As used in this section and sections thirty-one to thirty-five, inclusive, the following words and terms shall have the following meanings unless a contrary intent is clearly indicated:—

“Agency”, the Massachusetts Industrial Mortgage Insurance Agency;

“Board”, the board of directors of the agency;

“Fund”, the industrial mortgage insurance fund;

“Commissioner”, the commissioner of commerce and development;

“Loan” shall include, but not be limited to industrial mortgage loans, and may include bonds issued under the provisions of chapter forty D;

“Industrial enterprise”, any enterprise engaged in the giving of new shapes, new qualities or new combinations to matter as material products by the application of skill and labor thereto.

“Industrial development facilities”, industrial enterprises, recreation or research and development enterprise or part thereof, including any or all buildings, docks, wharves, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, riparian rights, water rights, franchises, machinery, equipment, furnishings, landscaping, utilities, approaches, roadways, pollution control facilities and other facilities necessary or desirable in connection therewith or incidental thereto, such as, but not limited to, office, warehouse, terminal, transportation and back-up power generating facilities.

“Primary employment”, a full-time, permanent job whose entry level hourly wage is at least one hundred and fifty per cent of the non-manufacturing minimum wage as defined in chapter one hundred and forty-nine.

Section 31. There is hereby created and placed in the department of commerce and development a body corporate and politic, constituting a public corporation and government instrumentality to be known as the Massachusetts Industrial Mortgage Insurance Agency, hereafter referred to as the agency, which shall not be subject to the supervision or regulation of the department of commerce and development or of any department, agency or other instrumentality of the commonwealth except to the extent and in the manner provided in this act. The agency shall maintain a close liaison with the department of commerce and development in order to facilitate a coordinated effort in the area of industrial development.

The agency shall be governed and its corporate powers exercised by a board of directors of five members, consisting of the commissioner of commerce and development or his designee, ex officio, and four persons to be appointed by the governor who shall serve at his pleasure. Of the four members appointed by the governor, at least one shall have had experience in the field of real estate development, one in the field of industrial mortgage credit and one in the field of commercial credit. Three members of the board shall constitute a quorum, but the approval of

insurance of a loan shall require the affirmative vote of at least three members of the board.

Each appointive member shall be appointed for a term of three years, except that in making his initial appointments, the governor shall appoint two members to serve for three years, one to serve for two years and one to serve for one year. Any person appointed to fill a vacancy shall serve for the remainder of the expired term. Any member shall be eligible for reappointment. The governor shall from time to time designate one appointed member to serve as chairman.

The board of directors may, subject to appropriation, appoint a treasurer and employ counsel and such other officers, agents and employees as it deems necessary or proper and may delegate to one or more of its members or to one or more of the agents or employees of the agency such powers and duties other than the power to make the findings required by section thirty-three as it deems necessary or proper to carry out any action by it. The board of directors may adopt, amend, and repeal by-laws, rules and regulations governing the manner in which the business of the agency may be conducted and its powers exercised. The board may adopt an official seal and sue and be sued in its own name. The members of the board shall serve without compensation, but each such member shall be reimbursed for all necessary expenses incurred by him in the discharge of his official duties.

The commissioner shall include in his budget requests such funds as may be required by the board to carry out its functions.

Section 32. There is hereby established an industrial mortgage insurance fund to which shall be credited all premiums received by the agency, any other sums realized by the agency pursuant to its industrial mortgage loan insurance agreements, whether by way of subrogation or otherwise, and any state appropriations or other monies made available to the fund. The fund shall be held in the custody of one or more banks or trust companies having a principal place of business in the commonwealth. The fund shall be held for the security of the holders of industrial mortgage loans insured under section thirty-three. It shall be governed by a trust agreement entered into by the agency with the trustees. The trust agreement may contain provisions and limitations as to the investment and disbursal of monies in the fund, the payment of expenses of the fund, the appointment, resignation and discharge of trustees, the delegation of enforcement and collection powers under the insurance agreements to the trustee, the duties of the trustees, amendments of the trust agreement and such other lawful provisions and limitation as may be deemed appropriate. The trust agreement may pledge premiums and other monies which are to be deposited in the fund. Such pledge shall be valid and binding from the time when the pledge is made. The premiums and other

monies so pledged and thereafter received by the fund or by the trustees in its behalf shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind against the fund, irrespective of whether such parties have notice thereof.

Section 33. The agency is empowered: —

(1) To provide insurance of loans, or their debt service, made to finance the acquisition, construction or alteration or any combination thereof, of industrial development facilities;

(2) To enter into agreements for such insurance;

(3) To fix a rate or rates of premiums for such insurance; and

(4) To exercise such other powers as are necessary or incidental to the foregoing.

The insurance provided by the agency shall be payable solely from the industrial mortgage insurance fund established by section thirty-two and shall not constitute a debt or pledge of the faith and credit of the commonwealth or of any subdivision thereof.

The board shall not approve the insurance of a loan unless it makes the following findings: —

(1) that the loan is to be secured by a first mortgage of real or personal property or both satisfactory to the board;

(2) that the mortgagor and mortgagee are responsible parties;

(3) that occupant of the project or projects is a responsible industrial occupant;

(4) the provisions of the mortgage loan are reasonable and proper, and in making such determination the board may take into account such factors as it deems relevant including, without limitation, the provisions for maintaining, insuring and repairing the project by the mortgagee and the remedies of the board upon default of the mortgagee;

(5) the project will provide employment having a reasonable relationship to the principal amount of loans to be insured therefor, taking into account, among other things, the investment per employee of comparable industrial facilities;

(6) adequate provision is being or will be made to meet any increased demand upon community public facilities that might result from the project;

(7) the size and scope of the project is such that a definite benefit to the economy of the commonwealth may reasonably be expected to result from the construction or improvement thereof; and the employment created shall be substantially primary employment;

(8) that the principal amount of the loan does not exceed ninety per cent of the cost of the industrial development facility and eighty per cent of the cost of the machinery and equipment;

(9) that the duration of the loan shall not exceed thirty years on an industrial development facility exclusive of machinery

and equipment and fifteen years on machinery and equipment; and that the authorization provisions are satisfactory to the board;

(10) that the insurance agreement provides for subrogation on terms satisfactory to the board upon payment of insured debt service from the fund;

(11) that the public interest is adequately protected by the terms of the loan and of the insurance agreement;

(12) that the insurance of the loan will not cause the insured debt service coming due in any one calendar year on account of an insured loan or loans for any one mortgagor to exceed twenty per cent of the amount in the fund when the finding is made; and

(13) that the insurance of the loan will not cause the insured debt service coming due in any one calendar year on account of all insured loans to exceed one hundred per cent of the amount in the mortgage insurance trust when the finding is made.

In addition to the above, the board shall not authorize insurance of a loan for pollution control facilities unless it makes the findings which the finance board is required to make under clause (f) of section twelve and paragraph (b) of section twenty-two of chapter forty D.

The board shall consult with the appropriate local and regional planning agencies to ascertain the relationship of a proposed project to any existing local or regional comprehensive plan; that, so far as feasible, the project is to be located in an area of generally high unemployment; and that employment opportunities will become available to the residents of such area.

Section 34. The agency shall annually submit to the governor, the chairman of the senate ways and means committee, the chairman of the house ways and means committee, the commissioner of administration, and the comptroller within ninety days after the end of its fiscal year, a complete and detailed report setting forth its operation and accomplishments; its receipts and expenditures during such fiscal year in accordance with the categories and classifications established by the agency for its operating and capital outlay purposes; and its assets and liabilities at the end of the fiscal year, including a schedule of its loans insured and commitments and the status of the funds.

Section 35. The books and records of the agency shall be subject to an annual audit by the auditor of the commonwealth.

SECTION 2. This act, being necessary for the welfare of the commonwealth and its inhabitants, shall be liberally construed to effect the purposes thereof.

SECTION 3. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Approved January 12, 1976.