

VIRGIN ISLANDS CODE ANNOTATED  
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ISLANDS

TITLE ELEVEN Commerce, Technology and Trade  
Chapter 23. Small Business Development  
Subchapter I. Small Business Development Agency

**§ 1251. Declaration of policy**

The essence of the American economic system is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The initiation, preservation, and expansion of such competition is basic not only to the economic well-being of the United States Virgin Islands, but to the security and general welfare of the People of the United States Virgin Islands. The rapid economic growth of the United States Virgin Islands in the past decade has brought many benefits and a higher standard of living to the great majority of the People of the United States Virgin Islands; however, there has been a noticeable failure to provide for and promote the involvement of the indigenous population of the United States Virgin Islands in private enterprise. This failure is the result of various factors, not the least of which is the fact that loans for business purposes have not been readily and reasonably available to native Virgin Islanders. The people of these Islands have been in many instances deprived of, and often not motivated, through no primary fault of their own, to seek the managerial and technical skills that are basic to the successful and competitive operation of small business concerns in a free enterprise system. The security and well-being of the local population cannot be fully realized; and the evils of absentee ownership and of the concentration of economic power cannot be reasonably avoided, unless the actual and potential capacity of the ownership and management of small business concerns by Virgin Islanders is encouraged and rapidly developed. It is the declared policy of the Legislature that the Government of the United States Virgin Islands should aid, counsel, assist, promote and protect, insofar as possible, the economic and social interest of the indigenous population of the United States Virgin Islands through the establishment and ownership of small business concerns.

It is not the intention of the Legislature by this chapter to provide loans for the capitalization of small business concerns when such funds are reasonably available from private banks or other financial institutions, public or private; however, it is the Legislature's intention to promote and encourage such banks and financial institutions to make loans on a risk basis after giving consideration to the technical and managerial assistance to be provided to loan applicants under the provisions of this chapter.

Finally, the Legislature finds that the programs and activities established and authorized by this chapter are in the public interest; and they are intended to maintain and strengthen the over-all economy of the United States Virgin Islands and to promote the general welfare of its citizens.

**HISTORY:** --Added Aug. 27, 1969, No. 2530, § 1, Sess. L. 1969, p. 244.

**NOTES:**

**HISTORY**

**Revision notes.**

Pursuant to Section 1 of Act 6753, §§ 1251-1265 of this chapter were placed under the newly designated Subchapter I.

Substituted "United States Virgin Islands" for "Virgin Islands" for purposes of conformity with V.I.C. style pursuant to section 14 of Title 1.

## **ANNOTATIONS**

1. Prerequisite to loan. 2. Purpose of loan.

### **1. Prerequisite to loan.**

Prerequisite to a business receiving a loan from the Small Business Development Agency is that the business has made an effort to and also failed to secure a loan from the private sector or from other governmental sources. 9 V.I.Op.A.G. 16.

### **2. Purpose of loan.**

It was never the intent of Legislature that recipient of Small Business Development Agency loan be used as a conduit to acquire funds and for such funds to be used to benefit another independent business concern or to liquidate the indebtedness of such other business concerns. 9 V.I.Op.A.G. 16.

For Small Business Development Agency to award a loan to a business, knowing that a large portion of the loan proceeds, if not all of it, will be used to liquidate the indebtedness of another corporation, to which the business owes no indebtedness, is a violation of the intent, purpose, objective, as well as the spirit, and letter of the law and closely borders on illegality. 9 V.I.Op.A.G. 16.

## **§ 1252. Eligibility for assistance; definition of small business concern**

- a) A person shall be eligible for all forms of assistance under this chapter if--
  1. he owns at least fifty percent (50%) legal or equitable interest in a small business concern, either established or to be established, in the United States Virgin Islands; and
  2. he is or will be active in the management or operation of a small business concern on a full-time basis and such small business concern is or will be his principal means of support; and
  3. he was born in the United States Virgin Islands; or his mother or father was born in the United States Virgin Islands and he has been a bona fide continuous resident of the United States Virgin Islands for at least five years; or he has been a bona fide continuous resident of the United States Virgin Islands for at least 10 years.
- b) A small business concern, including firms, partnerships of all kinds and corporations, shall be eligible for all forms of assistance under this chapter if at least a fifty percent (50%) legal or equitable interest therein is owned by a person or persons eligible for assistance under the provisions of subsection (a) of this section.
- c) For the purpose of this chapter, a small business concern shall be deemed to be one which--
  1. is owned wholly or in part by a person eligible for assistance under the provisions of subsection (a) of this section; and

2. whose receipts from all sources of any year cannot reasonably be expected at the time of application for assistance under the provisions of this chapter to exceed:
  - A. \$1,000,000, whose investments total \$20,000 and which employs at least two persons; or
  - B. whose receipts exceed \$1,000,000, but are not more than \$1,500,000, whose investments total at least \$30,000 and which employs at least three persons; or
  - C. whose receipts are more than \$1,500,000 but less than \$2,500,000 whose investments total at least \$40,000 and which employs at least four persons; or
  - D. whose receipts exceed \$2,500,000 but are less than \$3,000,000, whose investments total at least \$50,000 and which employs not less than 5 persons; or
  - E. whose receipts exceed \$3,000,000 but are not more than \$4,000,000, whose investments total at least \$60,000 and which employs not more than 50 persons; and
- d) Notwithstanding any other provision of this section, the Director of the Virgin Islands Small Business Development Agency with the approval of the Loan Policy Board may grant any form of assistance available under this chapter to a small business concern that does not meet all of the eligibility requirements required by this section provided that (1) at least fifty-one percent (51%) of the legal or equitable interest in such small business concern is owned by two or more persons each of whom has been a bona fide continuous resident of the United States Virgin Islands for at least 10 years or was born in the United States Virgin Islands, or his mother or father was born in the United States Virgin Islands and he has been a bona fide continuous resident of the United States Virgin Islands for at least five years, and that (2) one of such persons is or will be active in the management or operation of such small business concern and such small business concern is or will be his principal means of support.
- e) Notwithstanding any other provision of this section, the Director of the Virgin Islands Small Business Development Agency, with the approval of the Loan Policy Board, shall adjust the maximum receipts number set out in subsection (c)(2) every five years from the effective date of this subsection for to reflect annual inflation in the territory as published by the Bureau of Economic Research.

**HISTORY:** --Added Aug. 27, 1969, No. 2530, § 1, Sess. L. 1969, p. 244; amended Dec. 23, 1970, No. 2883, Sess. L. 1970, p. 368; Feb. 28, 1972, No. 3177, Sess. L. 1972, p. 30; May 1, 1972, No. 3220, §§ 1, 2, Sess. L. 1972, p. 84; Sept. 1, 2005, No. 6748, § 5 1., 2., Sess. L. 2005, pp. 208, 209.

#### **NOTES:**

#### **HISTORY**

#### **Revision notes.**

Substituted "United States Virgin Islands" for "Virgin Islands" throughout the section for purposes of conformity with V.I.C. style pursuant to section 14 of Title 1.

#### **Amendments**

#### **--2005.**

Act 6748, § 5, in subsection (c), substituted a colon for "\$1,000,000 and will not employ more than 50 persons" at the end of subsection (c)(2), added (c)(2)(A) through (c)(2)(E); and added subsection (e).

**--1972.**

Subsection (a): Act No. 3220 inserted reference to mother or father born in the Virgin Islands and a continuous residency of five years and reduced bona fide continuous residency to "10" years in subdivision (3).

Subsection (c): Act No. 3177 omitted the word "gross" preceding the word "receipts" and substituted "\$1,000,000" for "\$500,000" and "50" for "30" persons in subdivision (2).

Subsection (d): Act No. 3220 reduced bona fide continuous residency to 10 years and inserted reference to mother or father born in the Virgin Islands and a continuous residency of five years in clause (1).

**--1970.**

Subsection (d): Added.

**§ 1253. Small Business Development Agency; director; loan policy board**

- a) In order to carry out the policies of this chapter there is created a subsidiary entity under the name of "Virgin Islands Small Business Development Agency" (herein referred to as the Agency) within, and wholly administered and operated by the Economic Development Authority.
- b) The management of the Agency shall be vested in the Chief Executive Officer of the Authority.
- c) The Small Business Development and Loan Fund as provided for in chapter 111 of Title 33 of this Code, shall be available for the Agency's use in financing the functions performed under section 1255 of this chapter. All repayments of loans, payments of interest, and other receipts arising out of transactions financed from the Fund shall be paid into the Fund. Not to exceed an aggregate of \$15,000,000 shall be outstanding at any one time for the purposes enumerated in section 1255 of this chapter.
- d) There is created the Loan Policy Board of the Virgin Islands Small Business Development Agency, which shall consist of seven members.
  1. The Commissioners of Tourism and Finance, and the Chief Executive Officer of the Agency, who shall be executive secretary of the Board, shall serve as members of the Board. The remaining four members of the Board shall be appointed by the Governor from the members of the Authority's Board of Directors. The Governor shall select such members who are known to be familiar with and sympathetic to small businesses' needs and problems and who meet the conditions of paragraph (3) of subsection (a) of section 1252 of this chapter.
  2. The appointed members of the Board shall be appointed for a term concurrent to their appointment to the Board of Directors of the Authority.
  3. The appointed members of the Board shall receive the sum of \$50 for each day or part thereof spent in the performance of his official duties. Every member of the Board shall be reimbursed for necessary travel, subsistence, and other expenses actually incurred in the discharge of his duties as such member.
  4. As soon as practicable after the first members of the Board have been appointed, the members shall meet and organize by electing from among the membership a Chairman and a Vice-Chairman. The Chairman and Vice-Chairman shall be elected annually for terms of one year, and shall serve until their respective successors are elected and take office. The Chairman shall preside at all meetings and the Vice-Chairman shall preside in the absence or disability of the Chairman. The Board may, in the absence or disability of the Chairman and Vice-Chairman, elect any of its members to act as chairman pro tempore. Four members shall constitute a quorum of the Board for the transaction of business, and the Board may function notwithstanding vacancies provided a quorum is present. The Board shall meet at

such times and places as it may fix and determine, but shall hold at least six regularly scheduled meetings a year; and special meetings may be held on call of the Chairman or any three members.

- e) 1) The Loan Policy Board shall establish general policies and guidelines (particularly with reference to the public interest involved in the granting and denial of applications for financial assistance by the Agency and with reference to the coordination of the functions of the Agency with other activities and policies of the Government), which shall govern the granting and denial of applications for financial or technical assistance by the Agency.
- 2) The Loan Policy Board shall administer the Small Business Incubator Program established in subchapter II of this chapter and may promulgate rules and regulations and exercise all powers necessary to carry out the purpose of the Program.

**HISTORY:** --Added Aug. 27, 1969, No. 2530, § 1, Sess. L. 1969, p. 244; amended May 15, 1987, No. 5256, § 2, Sess. L. 1987, p. 13; Sept. 28, 1990, No. 5636, § 1(c), Sess. L. 1990, p. 346; Dec. 28, 1995, No. 6090, § 11, Sess. L. 1995, p. 254; Feb. 1, 2001, No. 6390, § 19, Sess. L. 2000, p. 420; Aug. 11, 2005, No. 6753, § 2, Sess. L. 2005, p. 223.

#### **NOTES:**

#### **HISTORY**

##### **Amendments**

##### **--2005.**

Act 6753, § 2, in subsection (e), designated the existing language as paragraph (1) and added paragraph (2).

##### **--2000.**

Rewrote subsections (a), (b), (d)(1), (d)(2) and made grammatical changes to subsection (c), the text of which was not set out here.

##### **--1995.**

Subsection (a): Substituted "Government Development Bank" for "Department of Tourism" preceding "under the name of".

##### **--1990.**

Subsection (d)(3): Substituted "\$50" for "\$30" following "sum of" in the first sentence.

##### **--1987.**

Subsection (c): Substituted "\$15,000,000" for "\$5,000,000" following "aggregate of" in the third sentence.

#### **CROSS REFERENCES**

Small Business Development and Loan Fund, see section 3031 of Title 33.

**§ 1254. General powers, appointment and compensation of personnel; use of other services and facilities**

- a) The Agency shall have power to adopt, alter, and use a seal, which shall be judicially noticed. The Director is authorized, subject to the provisions of chapter 25 of Title 3 of the Virgin Islands Code, to select, employ and recommend for appointment such officers, employees and agents as shall be necessary to carry out the provisions of this chapter; and to define their authority and duties; provided, however, that the Director is authorized to select and employ officers, employees and agents for periods not to exceed six months to accomplish such projects, programs and assignments as the Director may deem essential to carry out the purposes of this chapter without compliance with the provisions of chapter 25 of Title 3 of this Code; provided, however, that the hiring of any such person shall be evidenced by a contract in writing approved by the Attorney General or an Assistant duly authorized in writing; and provided, further, that the Director shall submit on June 30, and December 30 of each year to the Governor and the Legislature a list of the employment of all such persons, with a description of their duties, compensation and length of employment. The Agency, with the consent of any board, commission, instrumentality, authority, or executive department of the Government, may avail itself on a reimbursable or non-reimbursable basis of the use of information, services, facilities (including any field service thereof), officers, and employees thereof, in carrying out the provisions of this chapter.
- b) In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter the Director may--
1. sue and be sued only in actions arising out of contract in the District and Superior Court of the United States Virgin Islands; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Director or the property of the Agency;
  2. under regulations prescribed by him, assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions and for such consideration as the Director shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by the Agency in connection with the payment of loans granted under this chapter, and to collect or compromise all obligations assigned to or held by the Agency and all legal or equitable rights accruing to him in connection with the payment of such loans until such time as such obligations may be referred to the Attorney General for suit or collection; provided, that any such compromise shall be subject to prior approval of the Loan Policy Board;
  3. deal with, complete, renovate, improve, modernize, insure, or rent, or sell for cash or credit upon such terms and conditions and for such consideration as the Director shall determine to be reasonable, any real property conveyed to or otherwise acquired by the Agency in connection with the payment of loans granted under this chapter;
  4. pursue to final collection, by way of compromise or otherwise, all claims against third parties assigned to the Agency in connection with loans made by the Agency; provided, that any such compromise shall be subject to prior approval of the Loan Policy Board; this shall include authority to obtain deficiency judgments or otherwise in the case of mortgages assigned to the Agency. The power to convey and to execute in the name of the Agency deeds of conveyance, deeds of release, assignments and satisfaction of mortgages, and any other written instrument relating to real property or any interest therein acquired by the Agency pursuant to the provisions of this chapter may be exercised by the Director or by any officer or agent appointed by him with an express delegation of power of attorney;
  5. acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible), whenever deemed necessary and appropriate to the conduct of the activities authorized in section 1255 of this chapter.

6. make such rules and regulations as he deems necessary to carry out the authority vested in him by or pursuant to this chapter;
  7. in addition to any powers, functions, privileges, and immunities otherwise vested in him, take any and all action determined by him to be necessary or desirable in making, servicing, compromising, modifying, liquidating, or otherwise dealing with or realizing on loans made under the provisions of this chapter; provided, that no loan shall be compromised, modified or liquidated without the prior approval of the Loan Policy Board;
  8. accept the services and facilities of federal, territorial, and local agencies and groups, both public and private, and utilize such gratuitous services and facilities as may, from time to time, be necessary, to further the objectives of this chapter;
  9. make contracts and cooperative agreements with public and private agencies, private corporations, industries and businesses, to cooperate in managerial and technical training; and to provide for employment therewith at the management level of persons eligible for assistance under the provisions of this chapter;
  10. establish single and joint accounts in banks, both savings and checking, with persons receiving funds and assistance under this chapter, and to disburse singly or jointly funds therefrom jointly with such persons when such joint disbursement is deemed necessary in the public interest.
- c) To such extent as he finds necessary to carry out the provisions of this chapter, the Director is authorized to procure the services of experts or consultants or organizations thereof. The Director may assign all accounts, which are inactive and delinquent more than one hundred and eighty (180) days from when they are first due and owing, to a third party collection agency for collection.

**HISTORY:** --Added Aug. 27, 1969, No. 2530, § 1, Sess. L. 1969, p. 244; amended Feb. 12, 1971, No. 2935, §§ 1, 2, Sess. L. 1970, p. 425, 426; Sept. 9, 1976, No. 3876, § 5, Sess. L. 1976, p. 197; Dec. 13, 1993, No. 5917, § 4, Sess. L. 1993, p. 278.

**NOTES:**

**HISTORY**

**Revision notes.**

Substituted "United States Virgin Islands" for "Virgin Islands" in subsection (b)(1) for purposes of conformity with V.I.C. style pursuant to section 14 of Title 1.

**Amendments**

**--1993.**

Subsection (c): Added the second sentence.

**--1976.**

Subsection (b)(1): Substituted "Territorial Court [now Superior Court]" for "Municipal Court".

**--1971.**

Subsection (a): Amended generally.

Subsection (b)(10): Added.

## ANNOTATIONS

### 1. Employees.

#### **1. Employees.**

The Director of the Small Business Development Agency has the ultimate responsibility under the law for employing and recommending for appointment such persons as may be needed for the proper functioning of the Agency. 6 V.I.Op.A.G. 335.

### **§ 1255. Loans, participations and guaranties; authorization; limitations; conditions**

- a) The Director is authorized, subject to the provisions of section 1256 of this chapter and subject to the prior approval of the Loan Policy Board, to make, participate (on an immediate basis) in, or guarantee loans, repayable in not more than 15 years, to any small business concern (as defined in section 1252 and regulations issued thereunder), or to any eligible person as defined in section 1252 of this chapter seeking to establish such a concern, when he determines that such loans will assist in carrying out the purposes of this chapter: provided, however, that no loan shall be made from the Small Business Development and Loan Fund to a single borrower if the total of all loans from such Fund to such borrower outstanding at any one time would exceed \$100,000; and provided, further, that no such loans shall be made, participated in, or guaranteed if the total of such assistance under the provisions of this chapter to a single borrower outstanding at any one time would exceed \$300,000; and provided, further, that when the Economic Development Agency of the United States Department of Commerce is participating with the local government in financing a particular project, the maximum time for repayment of the loan shall be the same as for loans made, participated in or guaranteed by the Economic Development Agency of the United States Department of Commerce. The Director may defer payments on the principal of such loans for a grace period and use such other methods as he deems necessary and appropriate to assure the successful establishment and operation of such small business concern. The Director shall, unless it is clearly indicated to be unnecessary, as a condition of such financial assistance, require that the borrower take steps to improve his management skills by participating in a management training program approved by the Director; provided, however, that any management training program so approved must be of sufficient scope and duration to provide reasonable opportunity for the individuals served to develop entrepreneurial and managerial self-sufficiency. The Director shall encourage, as far as possible, the participation of the private business community in the programs of assistance to such small business concerns, and seek to stimulate new private lending activities to such concerns through the use of the loan guaranties and participations in loans.
- b) The Director shall provide for continuing evaluation of programs under this section, including information on the location, income characteristics, and types of businesses and individuals assisted and new private lending activity stimulated. The results of such evaluation together with recommendations shall be included in the report required by section 1263 of this chapter.

**HISTORY:** --Added Aug. 27, 1969, No. 2530, § 1, Sess. L. 1969, p. 244; amended Feb. 15, 1973, No. 3388, Sess. L. 1972, p. 574; Apr. 17, 1973, No. 3416, Sess. L. 1973, p. 44.

### **NOTES:**

### **HISTORY**



**Amendments****--1973.**

Subsection (a): Act No. 3388 added a new proviso relating to time for repayment of loans at the end of the first sentence.

Act No. 3416 substituted the figures "\$100,000" for "\$50,000" and "\$300,000" for "\$150,000" in the first two provisos of the first sentence.

**CROSS REFERENCES**

Small Business Development and Loan Fund, see section 3031 of Title 33.

**§ 1256. Loan terms and conditions**

Loans made pursuant to section 1255 of this chapter (including immediate participation in and guaranties of such loans) shall have such terms and conditions as the Loan Policy Board shall determine, subject to the following limitations--

- 1) there is a reasonable assurance of repayment of the loan;
- 2) the financial assistance is not otherwise available on reasonable terms from private sources or from federal or other territorial government programs;
- 3) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made;
- 4) the loan bears interest at a uniform, established rate for all borrowers: provided, however, that the Loan Policy Board, upon recommendation of the Director, may establish a new rate from time to time, taking into consideration the going rate on commercial loans made by banks and financial institutions in the United States Virgin Islands and the general condition of the economy;
- 5) fees not in excess of amounts necessary to cover administrative expenses may be required on loan guaranties or direct loans.
- 6) loans made for the purchase of inventory or motor vehicles shall be repayable in not more than five years;
- 7) loans made for the purchase of equipment shall be repayable in not more than ten years;
- 8) loans made for the acquisition of land; or the construction, conversion or expansion of buildings shall not exceed 50% of the total loans to new small business concerns; and shall not be made unless at least three banks doing business in the United States Virgin Islands have refused to grant a conventional mortgage loan on the property at a rate of interest normally charged on such loans in the United States Virgin Islands with a term of fifteen years;
- 9) no loan shall be made to any corporation unless the repayment of such loan is guaranteed by all stockholders of such corporate borrower.

**HISTORY:** --Added Aug. 27, 1969, No. 2530, § 1, Sess. L. 1969, p. 244; amended Sept. 4, 1986, No. 5192, § 1, Sess. L. 1986, p. 208.

**NOTES:****HISTORY**

**Revision notes.**

Substituted "United States Virgin Islands" for "Virgin Islands" in subsections (4) and (8) for purposes of conformity with V.I.C. style pursuant to section 14 of Title 1.

**Amendments****--1986.**

Subsection (5): Added "or direct loans" following "guaranties".

**CROSS REFERENCES**

Interest and usury, see section 951 et seq. of this title.

**ANNOTATIONS**

1. Prerequisite to loan. 2. Purpose of loan.

**1. Prerequisite to loan.**

Prerequisite to a business receiving a loan from the Small Business Development Agency is that the business has made an effort to and also failed to secure a loan from the private sector or from other governmental sources. 9 V.I.Op.A.G. 16.

**2. Purpose of loan.**

The intent of Legislature is that Small Business Development Agency loan funds be used only in and for the benefit of the loanee's business and in furtherance and promotion of its business activities. 9 V.I.Op.A.G. 16.

It was never the intent of Legislature that recipient of Small Business Development Agency loan be used as a conduit to acquire funds and for such funds to be used to benefit another independent business concern or to liquidate the indebtedness of such other business concerns. 9 V.I.Op.A.G. 16.

For Small Business Development Agency to award a loan to a business, knowing that a large portion of the loan proceeds, if not all of it, will be used to liquidate the indebtedness of another corporation, to which the business owes no indebtedness, is a violation of the intent, purpose, objective, as well as the spirit, and letter of the law and closely borders on illegality. 9 V.I.Op.A.G. 16.

**§ 1257. Guarantee of rental payments**

The Director is authorized, subject to the prior approval of the Loan Policy Board, to guarantee the payment of rents on behalf of any small business concern eligible for assistance under the provisions of this chapter when it is determined that such guarantee is consistent with the purposes of this chapter. In those instances where the tenant is a corporation, all stockholders shall first guarantee the payment of rents prior to the Director making any guarantee pursuant to this subchapter.

**HISTORY:** --Added Aug. 27, 1969, No. 2530, § 1, Sess. L. 1969, p. 244.

**§ 1258. Technical assistance and management training; financial assistance to organizations to provide technical assistance**

- a) In order that eligible persons, as defined in section 1252 of this chapter, may establish and operate small business concerns in the United States Virgin Islands, the Director shall provide technical assistance. The technical assistance provided shall include, but not be limited to the following:
  1. aid in preparing loan applications and presentations.
  2. consulting services relating to business organization, business management, accounting services, legal requirements, and general entrepreneurial skills.
  3. ongoing consulting services to new or reorganized small business concerns.
  4. referral services to provide a contact between the applicant and banking and financial institutions and with existing public and private small business assistance programs.
  5. disbursement control over any funds, including loans, secured to finance a small business concern if it is determined that such control will assist an eligible person in obtaining a loan from a private bank or other financial institution, public or private.
- b) No technical assistance under the provisions of this section shall be granted to any eligible person unless he has the primary managerial responsibility for the small business concern he represents.
- c) The Director is authorized to provide financial assistance to public and private organizations to pay all or part of the cost of projects designed to provide technical and management assistance to individual and small business concerns eligible for assistance under the provisions of this chapter.
- d) Financial assistance under subsection (c) of this section may be provided for projects including without limitation--
  1. planning and research, including feasibility studies and market research;
  2. the identification and development of new business opportunities;
  3. the furnishing of centralized services with regard to public services and government programs, including programs authorized under this chapter;
  4. the establishment and strengthening of business service agencies, including trade associations and cooperatives;
  5. the encouragement of the placement of subcontracts by major business with small business concerns, including the provisions of incentives and assistance to such major business so that they will aid in the training and upgrading of potential subcontractors or other small business concerns;
  6. the furnishing of business counselling, management training, legal advice and other related services, with special emphasis of the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.
- e) All projects under the provisions of subsections (c) and (d) of this section shall promote the ownership, participation in ownership, or management of small business concerns by persons eligible for assistance under the provisions of this chapter.

- f) To the extent feasible, services under this section shall be provided in a location which is easily accessible to the individuals and small business concerns served and at such time or times as are most convenient for a majority of those to be served.
- g) The Director shall provide for a separate and continuing evaluation of programs and projects under this section, including, but not limited to the following--
  1. full information on and analysis of the character and impact of technical and managerial assistance provided;
  2. a history of all applicants for assistance, including the location, income characteristics and types of businesses and individuals assisted;
  3. the extent to which private resources and skills have been involved in these programs;
  4. the dollar amounts of loans generated by such technical assistance, including the types of loans which were granted and the type which were not granted;
  5. the value of small business assisted, including the number of new jobs created and the number of new employees and their characteristics;
  6. the economic contribution returned to the Government of the United States Virgin Islands by such small businesses; and
  7. the opinions as to the worth of such technical and managerial assistance as expressed by lending institutions making loans to such small business concerns. Such evaluation together with recommendations as the Director deems advisable shall be included in the report required by section 1263 of this chapter.

**HISTORY:** --Added Aug. 27, 1969, No. 2530, § 1, Sess. L. 1969, p. 244.

**NOTES:**

**HISTORY**

**Revision notes.**

Substituted "United States Virgin Islands" for "Virgin Islands" in subsections (a) and (g)(6) for purposes of conformity with V.I.C. style pursuant to section 14 of Title 1.

**§ 1258a. SBDA Managerial and Technical Assistance Fund**

There is established in the Treasury of the United States Virgin Islands a special fund to be known as the SBDA Managerial and Technical Assistance Fund (hereinafter referred to as the "Fund"). Said Fund shall be maintained for the purpose of deposit therein of funds received from the Federal Small Business Administration to provide managerial and technical assistance to small business concerns in the United States Virgin Islands, and for disbursement therefrom of said funds for said purposes. Deposits to and disbursements from said Fund shall be made by the Commissioner of Finance upon the authorization of the Board of Directors of the Government Development Bank.

**HISTORY:** --Added Nov. 17, 1977, No. 4070, Sess. L. 1977, p. 274; amended Apr. 6, 1998, No. 6222, § 5, Sess. L. 1998, p. 233.

**NOTES:****HISTORY****Revision notes.**

Substituted "United States Virgin Islands" for "Virgin Islands" for purposes of conformity with V.I.C. style pursuant to section 14 of Title 1.

**Amendments****--1998.**

Substituted "Board of Directors of the Government Development Bank" for "Director of the Small Business Development Agency" in the last sentence.

**§ 1259. Government contracts**

- a) The Director shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of all government departments, agencies and authorities, so that contracts, sub-contracts, and deposits made by the Government of the United States Virgin Islands or in connection with programs with Government funds are placed in such a way as to further the purposes of this chapter.
- b) The Director shall provide for the continuing evaluation of the programs under this section and the results of such evaluation together with recommendations shall be included in the report required by section 1263 of this chapter.

**HISTORY:** --Added Aug. 27, 1969, No. 2530, § 1, Sess. L. 1969, p. 244.

**NOTES:****HISTORY****Revision notes.**

Substituted "United States Virgin Islands" for "Virgin Islands" in subsection (a) for purposes of conformity with V.I.C. style pursuant to section 14 of Title 1.

**§ 1260. Coordination**

- a) In order to insure that all programs and activities related to the purposes of this chapter are carried out in a coordinated manner--
  1. the Director is authorized to call upon other Government departments and agencies to supply such statistical data, program reports, and other materials, information and assistance as he deems necessary to discharge his responsibilities under this chapter;
  2. all departments, agencies and authorities of the Government shall cooperate with the Director in carrying out his duties and responsibilities under this chapter; and carry out their pro-

grams and exercise their functions in such manner as will, to the maximum extent permitted by other applicable law, assist in carrying out the purposes of this chapter; and

3. the Governor shall direct that particular programs and functions (including but not limited to the expenditure of funds and the reservation of commercial and industrial sites on Government-owned land to be available for lease to small business concerns eligible for assistance under the provisions of this chapter), of the departments, agencies and authorities referred to in paragraph (2) of this section shall be carried out, to the extent not inconsistent with applicable law, in conjunction with or in support of the programs and activities authorized under this chapter.

**HISTORY:** --Added Aug. 27, 1969, No. 2530, § 1, Sess. L. 1969, p. 244.

### **§ 1261. Information center**

- a) In order to insure that all programs and activities related to the purposes of this chapter are utilized to the maximum extent possible, and to insure that information concerning such programs and other relevant information is readily available, the Director is authorized as he deems appropriate to collect, prepare, analyze, correlate, and distribute such information, either free of charge or by sale at cost, and make arrangements and pay for any printing and binding.
- b) The Director is further authorized to obtain and distribute, free of charge or by sale at cost, information and publications issued by federal or territorial departments and agencies, and any other public or private organization, that provides information or assistance to small business concerns.

**HISTORY:** --Added Aug. 27, 1969, No. 2530, § 1, Sess. L. 1969, p. 244.

### **§ 1262. Duplication of activities**

The Director shall not duplicate the work or activities of any other department or agency of the Government of the United States Virgin Islands and nothing contained in this chapter shall be construed to authorize any such duplication unless such work or activity is expressly authorized for in this chapter.

**HISTORY:** --Added Aug. 27, 1969, No. 2530, § 1, Sess. L. 1969, p. 244.

#### **NOTES:**

#### **HISTORY**

#### **Revision notes.**

Substituted "United States Virgin Islands" for "Virgin Islands" for purposes of conformity with V.I.C. style pursuant to section 14 of Title 1.

**§ 1263. Annual reports; applicants' files**

- a) Not later than 120 days after the close of each fiscal year, the Director shall prepare and submit to the Governor and the Legislature, a full and complete report on the activities of the programs and activities established by this chapter during such year.
- b) The Director shall prepare and retain a file on each applicant, which shall include copies of all correspondence and a detailed memorandum of the reasons for acting favorably or unfavorably on the application, as the case may be. Pending the final determination of the Agency on each application all information in such files shall be confidential.

**HISTORY:** --Added Aug. 27, 1969, No. 2530, § 1, Sess. L. 1969, p. 244; amended Oct. 29, 1970, No. 2858, § 2, Sess. L. 1970, p. 347.

**NOTES:****HISTORY****Amendments****--1970.**

Subsection (b): Added second sentence.

**§ 1264. Offenses and penalties; false statements; overevaluation of securities**

- a) Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Agency, or for the purpose of obtaining money, property, or anything of value, under this chapter, shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than five years, or both.
- b) Whoever, being connected in any capacity with the Agency, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise entrusted to it, or (2) with intent to defraud the Agency or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Agency, makes any false entry in any book, report, or statement of or to the Agency, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (3) with the intent to defraud participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, commission, contract, or any other act of the Agency, or (4) gives any unauthorized information concerning any future action or plan of the Agency which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any small business concern receiving loans or other assistance from the Agency, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both.

**HISTORY:** --Added Aug. 27, 1969, No. 2530, § 1, Sess. L. 1969, p. 244.

**§ 1265. Small Businessman of the Year Award**

- a) There is hereby established the Small Businessman of the Year Award to be awarded to a client of the Small Business Development Agency who has demonstrated good business practices over a period of three years and who has been proficient and dynamic in the development of his small business concern.
- b) The recipient of the Award shall be chosen annually by majority vote of the Loan Policy Board from a list of three candidates submitted to said Board by the Director; Provided, however, That the Board may choose not to confer said Award in a particular year for reasons which it deems good and appropriate.
- c) The Small Business Development Agency is authorized to award an appropriate plaque to the Small Businessman of the Year at an appropriate ceremony held for that purpose.

**HISTORY:** --Added Apr. 2, 1975, No. 3681, Sess. L. 1975, p. 14.

**§ 1271. Short title**

This subchapter shall be known and may be cited as the Small Business Incubators Act.

**HISTORY:** --Added Aug. 11, 2005, No. 6753, § 1, Sess. L. 2005, p. 217.

Subchapter II. Small Business Incubators Act

**§ 1272. Definitions**

The following words and phrases when used in this subchapter have the meanings given to them in this section unless the context clearly indicates otherwise:

- a) "Board" means the Loan Policy Board of the Virgin Islands Small Business Development Agency established in section 1253(d) of subchapter I of this chapter.
- b) "Incubator" means a facility in which small units of space may be leased by a tenant and in which management maintains or provides access to business development services for use by tenants and technical assistance.
- c) "Local sponsor" or "Sponsor" means an organization that enters into a written agreement with the Board to establish, operate and administer a small business incubator facility or to provide funding to an organization that operates such a facility, including and agency or instrumentality of the Government of the Virgin Islands, including the Economic Development Authority, or any private nonprofit or for-profit organization approved by the Board.
- d) "Program" means the Small Business Incubators Program established in section
- e) "Tenant" means a sole proprietorship, business partnership or corporation operating a business for profit or, if permitted by this subchapter not for profit, and leasing or otherwise occupying space in an incubator.



- f) "Small Business Incubator" means an economic development tool designed to accelerate the growth and success of entrepreneurial companies through an array of business support services and resources with the primary goal of producing successful firms that will graduate from the program, move into the community and leave the program as self-sustaining companies.

**HISTORY:** --Added Aug. 11, 2005, No. 6753, § 1, Sess. L. 2005, pp. 217-218.

**HIERARCHY NOTES:**

Tit. 11 Note

**§ 1273. Establishment of program**

There is established under the direction of the Virgin Islands Small Business Development Agency a grant, loan, loan guarantee and technical assistance program for the establishment, operation and administration of small business incubators, to be known as the Small Business Incubators Program.

**HISTORY:** --Added Aug. 11, 2005, No. 6753, § 1, Sess. L. 2005, p. 218.

**§ 1274. Incubator grants, loans and loan guarantees**

- a) **Application.** A local sponsor may submit an application to the Board to obtain a grant, loan or loan guarantee to establish an incubator. Each application shall:
1. Demonstrate that:
    - i. a facility exists that can be transformed into an incubator at a specified cost; or
    - ii. in the case of new and expansion construction, appropriate existing facilities are not available within the geographic area and an incubator facility will be constructed or expanded at a specified cost.
  2. Demonstrate the ability to directly provide or arrange for the provision of business development services for tenants of the incubator. These services must include, but not be limited to, financial consulting assistance, management and marketing assistance and physical services.
  3. Demonstrate a potential for sustained use of the incubator facility by eligible tenants, through a feasibility study or sound business plan.
  4. Demonstrate the ability to manage and operate the incubator facility in accordance with criteria determined by the Board.
  5. Include other information as the Board may require through rules or regulations.
- b) **Review of application.** The Board shall review and accept applications based on the following criteria:
1. Ability of the local sponsor to carry out the provisions of section 1275 of this subchapter;
  2. Economic impact of the incubator on the community;

3. Conformance with territorial-wide and island economic development plans if such exist;
4. Location of the incubator, in order to encourage geographic distribution of incubators across the Territory; and
5. Such other criteria as may be established by the board through rules or regulations.

c) **Grant and loan conditions.**

1. Grants and loans awarded or guaranteed may be used only for
  - a. feasibility studies and business plans,
  - b. the acquisition and leasing of land and buildings,
  - c. the construction, rehabilitation and expansion of buildings or other facilities, and
  - d. the purchase of equipment and furnishings that are necessary for the establishment and operation of the incubator.
2. With the exception of feasibility studies and business plans, grants, loans and loan guarantees may not be the sole source of funds or total eligible project costs. The maximum grant amount awarded in any project may not exceed \$250,000. Grants may be provided only to projects located in areas designated as distressed under the Enterprise Zone Program Act of title 29 Virgin Islands Code, chapter 19.
3. Funds loaned must be secured by lien positions on collateral at the highest level of priority which can accommodate the borrower's ability to raise sufficient debt and equity capital. When the obligation of a local sponsor is guaranteed, the financial institution holding the obligation shall be required to adequately secure the obligation.
4. Grants, loans and loan guarantees for an incubator in which the facility is currently leased may only be made if the applicant intends to buy the facility. These loans must be secured by a leasehold mortgage.
5. Payment of interest and principal on loans may be deferred at the discretion of the Board.
6. Funds may be loaned for a maximum of ten years or the useful life of the property, as established by the United States Department of Treasury, whichever is greater.

d) **Receipt of grants and economic development.** The Board shall:

1. Develop the incubators, criteria for receipt of grant funds, including criteria related to organizational capacity, community need, and the availability of other economic development; resources;
2. Accept and receive grants, gifts, and pledges of funds for the support of the Program, which shall be deposited in the Small Business Incubator Fund established in section 1273.
3. Integrate the promotion of small business incubators as economic development tools in its strategic plan.

**HISTORY:** --Added Aug. 11, 2005, No. 6753, § 1, Sess. L. 2005, pp. 218-220

### **§ 1275. Responsibilities of local sponsors**

A local sponsor, or the organization receiving assistance through the local sponsor, has the following responsibilities and duties in establishing and operating an incubator with assistance from the Program:

- a) Secure title on the facility or a lease with the intent to secure title to the facility.
- b) Manage the physical development of the incubator facility, including the provision of common conference or meeting space.
- c) Furnish and equip the facility to provide business services to the tenants.
- d) Market the facility and secure eligible tenants.
- e) Provide financial consulting, marketing and management assistance services or arrange for the provision of these services for tenants of the incubator, including assistance in accessing private financial markets.
- f) Set rental and service fees.
- g) Encourage the sharing of ideas between tenants and otherwise aid the tenants in an innovative manner while they are within the incubator.
- h) Establish policies and eligibility criteria of tenants into the incubator.
- i) Establish an advisory committee to assist in the performance of these functions.
- j) establish a graduation plan.

**HISTORY:** --Added Aug. 11, 2005, No. 6753, § 1, Sess. L. 2005, pp. 220, 221.

### **§ 1276. General powers and duties of the Board**

The Board shall:

- a) adopt such rules, statements of policy, procedures, forms and guidelines as may be necessary for the implementation of this subchapter, including the encouragement of incubators in economically distressed areas such as territorially and federally designated enterprise zones;
- b) Make loans and loan guarantees or grants or a combination of loans and grants to local sponsors for incubators and award seed capital challenge grants and, in the sole discretion of the board, provide for the conversion of any liens issued on or after November 1, 1985, into grants or into a combination of grants and loans.
- c) Ensure that local sponsors receiving loans or loan guarantees and recipients of grants meet the conditions of this subchapter.
- d) Receive and evaluate annual reports from local sponsors. The annual reports must include, but not be limited to, a financial statement for the incubator, evidence that all tenants in the facility are eligible under the terms of the legislation and a list of companies in the incubator.

**HISTORY:** --Added Aug. 11, 2005, No. 6753, § 1, Sess. L. 2005, p. 221.

### **§ 1277. Indicators of Program impact**

On or before March 1 of each year, the Board shall submit a report to the President of the Legislature which must include, but not be limited to:

- 1) The number of applications for incubators submitted to the Board;
- 2) The number of applications for incubators approved by the Board;
- 3) The number of incubators established through this program;
- 4) The number of tenants occupying each incubator;
- 5) The number of jobs provided by each incubator and tenants of each incubator;
- 6) The occupancy rate of each incubator;
- 7) Growth in employment by client companies during incubator stay;
- 8) Gross revenues of incubator companies aggregated across all companies in the incubator;
- 9) Gross revenues of incubator companies aggregated across all companies in the incubator over a number of years;
- 10) Growth in gross revenue of each client company during an incubator stay;
- 11) The average wage of each employee of each client company during the incubator stay;
- 12) The growth in the total tax base that the incubator, its tenants and its graduates represent; and
- 13) The number of companies still operating in the Territory after leaving incubators and the number of jobs they have provided. The Board shall attempt to identify the reasons why any companies have left the Territory after starting in an incubator.

**HISTORY:** --Added Aug. 11, 2005, No. 6753, § 1, Sess. L. 2005, p. 222.

### **§ 1278. Nondiscrimination**

No loan or loan guarantee may be made to a small business or local sponsor unless the business or local sponsor certifies to the Board, in a form satisfactory to the Board, that it shall not discriminate against any employee or against any applicant for employment because of race, religion, color, national origin, sex or age.

**HISTORY:** --Added Aug. 11, 2005, No. 6753, § 1, Sess. L. 2005, pp. 222, 223.

### **§ 1278a. Construction of subchapter**

Nothing in this subchapter shall be construed to limit incubators to government-funded entities. Private or non-profit incubators may be formed under the provisions of this Act.

**HISTORY:** --Added Aug. 11, 2005, No. 6753, § 1, Sess. L. 2005, p. 223.

**§ 1279. Small Business Incubators Fund**

- a) There is established in the Treasury of the Virgin Islands the Small Business Incubator Fund.
- b) The Fund consists of grants, gifts, loans, appropriations made from time to time by the Legislature and all other moneys from the Small Business Incubators Program.

**HISTORY:** --Added Aug. 11, 2005, No. 6753, § 1, Sess. L. 2005, p. 223.