May 27, 2020

A BILL TO BE ENTITLED

AN ACT TO PROVIDE PANDEMIC EMERGENCY ASSISTANCE FOR RESTAURANTS AND LODGING.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Transfer of Funds from Reserves to Relief Fund. – The State Controller shall transfer the sum of one hundred twenty-five million dollars ($125,000,000) for the 2019-2020 fiscal year from the Coronavirus Relief Reserve established in Section 2.1 of S.L. 2020-4 to the Coronavirus Relief Fund established in Section 2.2 of S.L. 2020-4.

SECTION 1.(b) Appropriation of Funds from Relief Fund. – There is appropriated from the Coronavirus Relief Fund to the Office of State Budget and Management the sum of one hundred twenty-five million dollars ($125,000,000) in nonrecurring funds for the 2019-2020 fiscal year to be allocated and used as provided in Sections 2 and 2.1 of this act. The funds appropriated in this section shall not revert at the end of the 2019-2020 fiscal year but shall remain available to expend as provided in Sections 2 and 2.1 of this act.

SECTION 2.(a) Restaurant Stabilization Program. – Fifty million dollars ($50,000,000) of the funds appropriated by Section 1(b) of this act shall be allocated to one or more community development financial institutions (CDFI) selected by the Director of the Budget for the purpose of making loans to assist qualifying businesses with business needs during periods of economic hardship occasioned by the COVID-19 pandemic.

SECTION 2.(b) Definitions. – The following definitions apply in this section:

(1) Compensation. – Defined in section 3401 of the Internal Revenue Code.

(2) Employee. – Defined in G.S. 143B-437.02A.

(3) Net loan funds. – The total loan fund appropriated in this act less (i) the cost of administering the loans made under the program, not to exceed five percent (5%) of the total amount loaned under the program, (ii) any loan amount forgiven pursuant to subdivision (9) of subsection (c) of this section, and (iii) the State’s loan funds that are not recaptured.

(4) North Carolina small farm. – A farm that (i) is enrolled in the present-use value program for agricultural or horticultural land under Article 11 of Subchapter II of Chapter 105 of the General Statutes and (ii) has provided an attestation that the farm has neither derived more than eighty-five percent (85%) of its revenue in any of the previous three fiscal years from a contractual relationship with a single business entity nor is directly or indirectly controlled by a business entity that is not an affiliate of the farm.

(5) Office. – The Office of State Budget and Management.
Qualifying business. – A restaurant or similar establishment located in this State, (ii) with the primary purpose of preparing and serving food subject to the taxes imposed by Article 5 of this Chapter, and (iii) capable of showing economic losses in gross revenue of greater than fifty percent (50%) as a result of the State of Emergency. The term does not include restaurants with more than 25 locations.

State of Emergency. – Executive Order No. 116 issued March 10, 2020, by Governor Roy A. Cooper, including any amendments issued by executive order.

SECTION 2.(c) The following shall apply to loans made under the assistance program authorized by this section:

(1) The CDFI shall provide assistance to, or direct to an appropriate entity that provides assistance to, a qualifying business with applying for available federal assistance.

(2) The CDFI shall prioritize loans for establishments on the following bases:
   a. The establishment is independently owned.
   b. The degree to which the establishment is capable of showing greater economic losses as a result of the State of Emergency. Showing of loss can be through filed tax returns or profit and loss statements or both.

(3) The CDFI shall operate the program in two phases. In phase one, loans may be awarded only to qualifying businesses with franchises or restaurants with fewer than five locations and with cumulative gross receipts from business activities for the taxable year of less than ten million dollars ($10,000,000). Phase one shall be held open for eight weeks. After eight weeks, the CDFI shall open phase two, in which loans may additionally be awarded to qualifying businesses not meeting the eligibility requirements of phase one.

(4) The CDFI shall work with the Golden L.E.A.F. (Long-Term Economic Advancement Foundation), Inc., the N.C. Small Business Center Network, the Office of Historically Underutilized Businesses within the Department of Administration, the N.C. Small Business and Technology Development Center, the North Carolina Institute of Minority Economic Development, Inc., and other similar entities with the goal of ensuring all qualifying businesses are aware of the program.

(5) The loan shall have an interest rate of three and one-half percent (3.5%).

(6) The term of the loan shall not exceed 120 months and shall be amortized over the term of the loan.

(7) A qualifying business shall certify in writing that (i) it will use a loan provided under the program for employee compensation, mortgage, rent, utilities, and other operating costs and expenses incurred on behalf of a business located in this State and (ii) it has not and will not seek a duplication of benefits in the form of a loan for small business assistance authorized in S.L. 2020-4 and allocated to the Golden L.E.A.F. (Long-Term Economic Advancement Foundation), Inc., for business needs during periods of economic hardship occasioned by COVID-19.

(8) A loan provided under the program is limited to no more than fifty thousand dollars ($50,000) per qualifying business.

(9) The CDFI shall forgive the portion of the amount loaned to a qualifying business in an amount equal to the sum of the following:
   a. Any portion of the loan that is used by December 30, 2020, by the business to purchase from a North Carolina small farm, directly or indirectly, produce, dairy, meat, or fish. A qualifying business may use
a large food wholesaler invoice that provides evidence that a portion
of the loan should be forgiven pursuant to this subdivision.

b. The pro rata amount of property taxes owed by the business under
Article 11 of Subchapter II of Chapter 105 of the General Statutes for
the period of the year to which the State of Emergency applies.

c. The amount of income tax owed by the business under Part 2 of Article
4 of Subchapter I of Chapter 105 of the General Statutes.

(10) Loans are made pursuant to an agreement with a qualifying business that
includes at least the following:

a. A provision requiring a qualifying business to certify in writing that it
will use a loan provided under the program for employee
compensation, mortgage, rent, utilities, and other operating costs and
expenses incurred on behalf of a business located in this State.

b. A provision establishing the method for determining compliance with
the program.

c. A provision requiring the qualifying business to (i) first repay the loan
amount with any federal assistance received by the business that
represents a duplication of benefits; provided, that the repayment does
not disqualify or impair the federal assistance available to the business
and (ii) reject or return, as applicable, any State assistance offered to
or received by the business in the form of a loan from funds authorized
by S.L. 2020-4 and allocated to the Golden L.E.A.F. (Long-Term
Economic Advancement Foundation), Inc., for business needs during
periods of economic hardship occasioned by COVID-19 to the extent
the State assistance represents a duplication of benefits.

d. A provision requiring the loan is secured through a Uniform
Commercial Code financing statement.

e. A provision requiring recapture of loan funds if a business fails to
comply with the requirements of the program. The CDFI shall
recapture loan funds only if the CDFI determines there is a reasonable
expectation that the recovery of funds will exceed the cost of recovery.

(11) The awarding of new loans shall cease upon six months following the date the
State of Emergency ends.

(12) Every six months, the Office shall submit a report on the program to the Joint
Legislative Economic Development and Global Engagement Oversight
Committee and the Fiscal Research Division. The duty to report pursuant to
this section shall cease after the submission of the report following when the
Office has remitted the entirety of the net loan funds to the Coronavirus Relief
Reserve. Each report shall contain all of the following:

a. The number of jobs retained.

b. The number of loans awarded.

c. The average loan amount.

d. The total amount loaned to date.

e. The total amount of loans repaid to date.

f. The total amount of loans defaulted on to date.

g. The total amount of loans defaulted that have been recaptured.

Six months following the date the State of Emergency ends and every six months
thereafter, each CDFI shall remit the net loan funds that have been received to the Office, which
shall deposit the funds into the Coronavirus Relief Reserve. Amounts deposited into the Reserve
under this subsection are receipts that do not constitute an "appropriation made by law," as that
phrase is used in Section 7(1) of Article V of the North Carolina Constitution.
SECTION 2.1.(a) Hotel Stabilization Program. – Seventy-five million dollars ($75,000,000) of the funds appropriated by Section 1(b) of this act shall be allocated to one or more community development financial institutions (CDFI) selected by the Director of the Budget for the purpose of making loans to assist qualifying businesses with business needs during periods of economic hardship occasioned by the COVID-19 pandemic.

SECTION 2.1.(b) Definitions. – The following definitions apply in this section:

(1) Compensation. – Defined in section 3401 of the Internal Revenue Code.

(2) Employee. – Defined in G.S. 143B-437.02A.

(3) Net loan funds. – The total loan fund appropriated in this act less (i) the cost of administering the loans made under the program, not to exceed five percent (5%) of the total amount loaned under the program and (ii) the State's loan funds that are not recaptured.

(4) Office. – The Office of State Budget and Management.

(5) Qualifying business. – A hotel, motel, or similar establishment located in this State with the primary purpose of providing temporary lodging at a per-night cost that is capable of showing economic losses in gross revenue of greater than fifty percent (50%) as a result of the State of Emergency. The term does not include vacation rentals by owner or other systems by which homeowners lease out space for short-term rentals using a facilitator.

(6) State of Emergency. – Executive Order No. 116 issued March 10, 2020, by Governor Roy A. Cooper, including any amendments issued by executive order.

SECTION 2.1.(c) The following shall apply to loans made under the assistance program authorized by this section:

(1) The CDFI shall provide assistance to, or direct to an appropriate entity that provides assistance to, a qualifying business with applying for available federal assistance.

(2) The CDFI shall prioritize loans for qualifying businesses based on the degree to which the business is capable of showing greater economic losses as a result of the State of Emergency. Showing of loss can be through filed tax returns or profit and loss statements or both.

(3) The CDFI shall operate the program in two phases. In phase one, loans may be awarded only to qualifying businesses with cumulative gross receipts from business activities for the taxable year of less than ten million dollars ($10,000,000). Phase one shall be held open for eight weeks. After eight weeks, the CDFI shall open phase two, in which loans may additionally be awarded to qualifying businesses not meeting the eligibility requirement of phase one.

(4) The CDFI shall work with the Golden L.E.A.F. (Long-Term Economic Advancement Foundation), Inc., the N.C. Small Business Center Network, the Office of Historically Underutilized Businesses within the Department of Administration, the N.C. Small Business and Technology Development Center, the North Carolina Institute of Minority Economic Development, Inc., and other similar entities with the goal of ensuring all qualifying businesses are aware of the program.

(5) The loan shall have an interest rate of three and one-half percent (3.5%).

(6) The term of the loan shall not exceed 120 months and shall be amortized over the term of the loan.

(7) A qualifying business shall certify in writing that (i) it will use a loan provided under the program for employee compensation, mortgage, rent, utilities, and other operating costs and expenses incurred on behalf of a business located in
this State and (ii) it has not and will not seek a duplication of benefits in the
form of a loan for small business assistance authorized in S.L. 2020-4 and
allocated to the Golden L.E.A.F. (Long-Term Economic Advancement
Foundation), Inc., for business needs during periods of economic hardship
occasioned by COVID-19.

(8) A loan provided under the program is limited to no more than fifty thousand
dollars ($50,000) per qualifying business.

(9) The CDFI shall forgive the portion of the amount loaned to a qualifying
business in an amount equal to the sum of the following:

a. The amount of occupancy taxes collected and remitted pursuant to

b. The pro rata amount of property taxes owed by the business under
Article 11 of Subchapter II of Chapter 105 of the General Statutes for
the period of the year to which the State of Emergency applies.

c. The amount of income tax owed by the business under Part 2 of Article
4 of Subchapter I of Chapter 105 of the General Statutes.

(10) Loans are made pursuant to an agreement with a qualifying business that
includes at least the following:

a. A provision requiring a qualifying business to certify in writing that it
will use a loan provided under the program for employee
compensation, mortgage, rent, utilities, and other operating costs and
expenses incurred on behalf of a business located in this State.

b. A provision establishing the method for determining compliance with
the program.

c. A provision requiring the qualifying business to (i) first repay the loan
amount with any federal assistance received by the business that
represents a duplication of benefits; provided, that the repayment does
not disqualify or impair the federal assistance available to the business
and (ii) reject or return, as applicable, any State assistance offered to
or received by the business in the form of a loan from funds authorized
by S.L. 2020-4 and allocated to the Golden L.E.A.F. (Long-Term
Economic Advancement Foundation), Inc., for business needs during
periods of economic hardship occasioned by COVID-19 to the extent
the State assistance represents a duplication of benefits.

d. A provision requiring the loan is secured through a Uniform
Commercial Code financing statement.

e. A provision requiring recapture of loan funds if a business fails to
comply with the requirements of the program. The CDFI shall
recapture loan funds only if the CDFI determines there is a reasonable
expectation that the recovery of funds will exceed the cost of recovery.

(11) The awarding of new loans shall cease upon six months following the date the
State of Emergency ends.

(12) Every six months, the Office shall submit a report on the program to the Joint
Legislative Economic Development and Global Engagement Oversight
Committee and the Fiscal Research Division. The duty to report pursuant to
this section shall cease after the submission of the report following when the
Office has remitted the entirety of the net loan funds to the Coronavirus Relief
Reserve. Each report shall contain all of the following:

a. The number of jobs retained.

b. The number of loans awarded.

c. The average loan amount.
Six months following the date the State of Emergency ends and every six months thereafter, each CDFI shall remit the net loan funds that have been received to the Office, which shall deposit the funds into the Coronavirus Relief Reserve. Amounts deposited into the Reserve under this subsection are receipts that do not constitute an "appropriation made by law," as that phrase is used in Section 7(1) of Article V of the North Carolina Constitution.

SECTION 3. Except as otherwise provided, this act is effective when it becomes law.