STATE OF NEW YORK

8364--A

IN SENATE

May 19, 2020

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT establishing the New York state small business protection program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings. a. In April 2020, the Federal Government enacted two Coronavirus Aid, Relief and Economic Security (CARES) Act stimulus packages where it introduced the Paycheck Protection Program (PPP) totaling $659 billion dollars to financially assist small businesses, and to prevent the loss of jobs and the failure of small businesses due to financial losses caused by the COVID-19 pandemic.

b. Many local small businesses including minority- and women-owned businesses (MWBEs) in our state did not receive any federal funding under the federal PPP in either of the two rounds of funding. In fact, most of the first round of funding totaling $349 billion, which was exhausted in 2 weeks, went to large publicly traded businesses.

c. According to a report issued by the Federal Small Business Administration Inspector General, the Small Business Administration (SBA) was faulted in administering the PPP, in that the SBA did not issue guidelines for banks to prioritize businesses in rural markets, companies that have only been in business for two years or less, or businesses owned by veterans, minorities, women and economically disadvantaged individuals. Moreover, the PPP application did not include demographic information making it difficult or near impossible to determine how much money went into the markets.

d. As New York state is reopening regionally post COVID-19, many of our small businesses, including MWBEs and farmers who did not receive any PPP funding are in desperate need of funding to employ and/or pay staff, purchase inventory, and pay rent and utilities.

§ 2. Establishment. Notwithstanding any provision of law to the contrary, the legislature shall authorize the establishment of a New York State Small Business Protection Program (NYSSBPP) to be funded in

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD16401-03-0

the amount of 100 million dollars from future federal stimulus funding. Such funding shall reimburse any moneys used from any state funds for the purposes described under sections four or five of this act.

§ 3. Eligibility. Entities shall be eligible for the NYSSBPP provided such entity has less than 100 employees per location, did not receive any federal funding from the Federal CARES Act, was in existence in New York state by the first day the state disaster emergency related to COVID-19 was declared by the governor, can document actual economic harm or revenue shortfall as a direct result of the pandemic, and has filed 2018 or 2019 tax returns. The lending priority shall be as follows:

a. small businesses, including minority- and women-owned business enterprises, owned by veterans, minorities, women, economically disadvantaged individuals and farmers;

b. businesses in the restaurant, luxury service, retail, transportation, hospitality and farming industries;

c. small businesses located in economically distressed or underserved communities and rural markets;

d. non-profit organizations having tax exempt status under section 501(c)(3), or a veterans organization having tax exempt status under section 501(c)(19) of the United States Internal Revenue Code;

e. sole proprietors, independent contractors, and self-employed persons;

f. small businesses that have been in existence for two years or less; and

g. new businesses formed or incorporated within 30 days after the expiration of the state of emergencies or the region of the state where the business is located has reopened post COVID-19.

§ 4. Loan details and forgiveness. a. All eligible entities pursuant to section three of this act, shall submit an application through community development financial institutions (CDFIs), minority depository institutions (MDIs), local community banks or credit unions located within the state. No applications shall be processed through any merchant cash advance or any financial technology companies. All lending institutions in this program shall collect and provide data about the borrowers' demographics and loan amount.

b. The loan amount shall equal 60% of the prior year eligible expenses not to exceed $100,000.00.

c. Such loan shall be forgiven if funds are used for payroll or 1099 employees, interest on mortgages, rent, utilities and inventory.

d. Purchases of new equipment are permissible under this program but such loan will not be forgiven as a grant.

e. All loan payments shall be deferred for 6 months, which can be deferred for an additional 6 months but not to exceed 1 year from the date of the loan.

f. No collateral or personal guarantees are required. Neither the government nor financial institutions shall charge qualifying entities any fees.

g. Forgiveness is based on the qualifying small business maintaining or quickly rehiring employees and maintaining salary levels. Forgiveness will be reduced if full-time headcount declines, or if salaries and wages decrease within 12 weeks of receiving such funding. The 12-week rule shall not apply to any entity if such entity paid its employees' salaries during the COVID-19 state of disaster emergencies or when such entity was closed. Documented proof of such payroll payment shall be required.

h. All loans not forgiven under subdivision b of this section shall have a maturity of 2 years and an interest rate of 1% or 3 years of the loan payments have been deferred.

i. The department of financial services shall have oversight and monitor the application process pursuant to this section. Such department shall create the application and promulgate rules necessary for the administration of this program.

§ 5. Grants. The NYSSBPP shall provide the following grants to all qualified small businesses, not-for-profits and charitable organizations:

a. A rent reimbursement grant to reimburse qualifying entities for rent paid during the COVID-19 pandemic, provided such entity has documentary proof of such paid rent. This rent reimbursement grant shall be capped at 3 months of paid rent during the state of emergencies;

b. A grant to reimburse qualifying entities for perishable inventory purchased before the COVID-19 state of disaster emergency that was thrown out due to the forced shut down of such entity and/or to replace food inventory to help such entity reopen; and

c. A grant subsidy for farmers to pay for gas and tolls to deliver the products throughout the state.

§ 6. Oversight. The state comptroller shall monitor the NYSSBPP to ensure the provisions of this act are properly executed. The state comptroller shall submit a report on such program to the governor, the temporary president of the senate and the speaker of the assembly, and shall post such on the comptroller's website on a quarterly basis describing any loans granted under such program.

§ 7. This act shall take effect immediately.