

STATE OF NEW YORK

10266

IN ASSEMBLY

April 8, 2020

Introduced by M. of A. BARCLAY, ASHBY, BLANKENBUSH, BRABENEC, BYRNE, BYRNES, CROUCH, DeSTEFANO, DiPIETRO, FINCH, FITZPATRICK, FRIEND, GARBARINO, GIGLIO, GOODELL, HAWLEY, JOHNS, KOLB, LALOR, LAWRENCE, LiPETRI, MALLIOTAKIS, MANKTELOW, McDONOUGH, MIKULIN, B. MILLER, M. L. MILLER, MONTESANO, MORINELLO, NORRIS, PALMESANO, PALUMBO, RA, REILLY, SALKA, SCHMITT, SMITH, SMULLEN, STEC, TAGUE, WALCZYK, WALSH -- read once and referred to the Committee on Small Business

AN ACT in relation to requiring the executive to direct all unallocated settlement funds that are reserved in the "economic uncertainties" fund and any further settlement money that may be received by the state to small business relief purposes consistent with the intent of the "small business emergency recovery act of 2020" (Part A); to amend the urban development corporation act, in relation to establishing the small business and not-for-profit recovery loan program (Part B); to amend the tax law, in relation to providing that in the years two thousand twenty through two thousand twenty-four, the empire state film production credit shall first be used to provide assistance to small businesses negatively impacted during the emergency declaration relating to the COVID-19 outbreak (Part C); authorizes the executive to repurpose all monies of the New York state urban development corporation, the environmental facilities corporation, the dormitory authority of the state of New York, the New York state energy research and development authority and all other state resources as identified and needed by the executive to fully fund programs created by the small business emergency recovery act of 2020 (Part D); to amend the tax law, in relation to granting an automatic extension for small businesses affected by an emergency declaration (Part E); authorizes the commissioner of the department of economic development to develop and implement a regulatory amnesty period for small businesses (Part F); and to amend part H of chapter 58 of the laws of 2019 amending the environmental conservation law, the alcoholic beverage control law and the state finance law, relating to establishing guidelines for bag waste reduction, in relation to the effectiveness thereof (Part G);

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

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

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1 Section 1. Short title. This act shall be known and may be cited as
2 the "small business emergency recovery act of 2020".

3 § 2. Legislative intent. The legislature seeks to provide immediate
4 assistance to small businesses and employees impacted by the COVID-19
5 outbreak. The pandemic COVID-19, which threatens human lives here in New
6 York and around the globe, has created a public health emergency that
7 has begun to severely impact our state economy, engulfing our small
8 businesses, gutting New York's financial health, and shaking the
9 national economy as a whole. New York state is home to 608,351 small
10 businesses in New York state and these businesses employ 54% of the
11 state's workforce, or nearly 4.2 million individuals.

12 The legislature recognizes New York's small business owners and
13 employees are the backbone of our state economy and the legislature must
14 act boldly to address the negative impacts of the business sector shut-
15 down. According to a recent poll by the National Federation of Independ-
16 ent Businesses, 76% of its members have been negatively impacted by
17 COVID-19. With the mandate to keep 100% of the non-essential workforce
18 home, many small businesses have had to close their doors with no indi-
19 cation of when they will be able to reopen. For some, it may mean they
20 never get to reopen, and the long-term impact of the shutdown on the
21 economy is unclear. It is imperative that the legislature provides imme-
22 diate assistance to small businesses and employees as they try to manage
23 the devastating impact of the COVID-19 virus and the interruption of
24 their business operations. The small business emergency recovery act of
25 2020 will offer fiscal relief and protections for small businesses and
26 their employees, while mitigating the risk of businesses being forced to
27 permanently close their doors and further harm the local and state econ-
28 omies.

29 It is therefore the intent of the legislature to implement measures to
30 assist New York's small businesses navigate these uncharted waters and
31 provide financial assistance in the way of loans, grants and tax relief.
32 The legislature recognizes that extraordinary times call for extraor-
33 dinary measures and therefore is directing that settlement money
34 received from financial or banking institutions, which in the past have
35 been used for reoccurring costs for capital programs or to cover gaps in
36 Financial Plan operations, to be used to help the state fight the
37 economic crisis brought on by the COVID-19 virus; these remaining
38 settlement monies are cash funds that can be used immediately to meet
39 the needs of our struggling small businesses. In addition to directing
40 the use of settlement monies, the small business emergency recovery act
41 of 2020 directs the urban development corporation to create a zero-in-
42 terest loan program, which features 50% loan forgiveness for businesses
43 and not-for-profits that return to 2019 employment levels. The act
44 repurposes the New York state film production tax credit to provide tax
45 relief for small businesses and authorizes the executive to access all
46 monies available within certain state agencies and authorities for the
47 purposes consistent with this act. Finally, the act provides automatic
48 extensions for tax filings and exemption from fees, fines and penalties
49 to small businesses impacted by this public health emergency.

50 § 3. This act enacts into law major components of legislation which
51 are necessary to implement the small business emergency recovery act of
52 2020. Each component is wholly contained within a Part identified as
53 Parts A through G. The effective date for each particular provision
54 contained within such Part is set forth in the last section of such
55 Part. Any provision in any section contained within a Part, including
56 the effective date of the Part, which makes a reference to a section "of

1 this act", when used in connection with that particular component, shall
2 be deemed to mean and refer to the corresponding section of the Part in
3 which it is found. Section five of this act sets forth the general
4 effective date of this act.

5 PART A

6 Section 1. Notwithstanding any other law, rule and regulation to the
7 contrary, the executive shall immediately direct all unallocated settle-
8 ment funds that are reserved in the "economic uncertainties" fund and
9 any further settlement money that may be received by the state to small
10 business relief purposes consistent with the intent of the "small busi-
11 ness emergency recovery act of 2020".

12 § 2. This act shall take effect immediately.

13 PART B

14 Section 1. Section 1 of chapter 174 of the laws of 1968, constituting
15 the New York state urban development corporation act, is amended by
16 adding a new section 16-bb to read as follows:

17 § 16-bb. Small business and not-for-profit recovery loan program. (1)
18 The corporation shall establish a fund to be known as the "small busi-
19 ness and not-for-profit recovery loan fund" and shall pay into such fund
20 any monies made available to the corporation for such fund from any
21 source. The monies held in or credited to the fund shall be expended
22 solely for the purposes set forth in this section. The corporation shall
23 not commingle the monies of such fund with any other monies of the
24 corporation or any monies held in trust by the corporation.

25 (2) The corporation shall allocate any monies made available for such
26 fund for the purpose of making zero interest loans to small businesses
27 and small not-for-profit organizations.

28 (3) As used in this section, the following terms shall have the
29 following meanings:

30 (a) "Small business" shall have the same meaning as defined in section
31 one hundred thirty-one of the economic development law. Such small busi-
32 ness must be a resident in this state, independently owned and operated,
33 not dominant in its field and employs one hundred or less persons;

34 (b) "Small not-for-profit organization" means a not-for-profit organ-
35 ization that employs one hundred or less persons;

36 (c) "Grace period" means the three hundred sixty-five day period after
37 a small business or small not-for-profit receives a recovery loan under
38 this section.

39 (4) The corporation may make zero interest loans to businesses or
40 organizations negatively affected by COVID-19 pandemic, provided:

41 (a) The business or organization has provided to the corporation proof
42 that such business or organization suffered a loss in revenue.

43 (b) The amount of the loan shall not exceed twenty-five thousand
44 dollars and shall be for a period of four years.

45 (c) The loan agreement shall not (i) require repayment during the
46 grace period, or (ii) charge interest on the principal amount.

47 (d) The loan agreement shall require that the affected business or
48 organization repay the loan in full not later than three years after the
49 end of the grace period. The loan agreement shall not contain a fee or
50 penalty for the prepayment or early payment of the loan.

51 (5) Small business and not-for-profit recovery loans may be used for
52 any operating and capital expenses, including but not limited to:

payroll, marketing, inventory, insurance, employee assistance, training, and any state or local taxes and fees.

(6) Any time during the grace period or the three-year repayment period, participating small businesses and small not-for-profits shall be eligible to have fifty percent of the principal loan forgiven if they meet or exceed their two thousand nineteen employment levels. The corporation shall coordinate with the department of labor and the department of taxation and finance to verify eligibility.

(7) (a) The corporation shall maintain records in the regular course of administration of the small business and not-for-profit recovery loan program, including a record of loans issued and of payments made under this section. The corporation shall regularly review such records to determine total loans issued and identify duplicative applications.

(b) The corporation may terminate any loan if the eligible entity misrepresents any information pertaining to the application or fails to comply with any requirements of this section in connection with the underlying loan.

(8) The corporation shall establish all necessary rules and regulations for small business and small not-for-profit participation. Such rules and regulations shall include but not be limited to a simplified application form and any additional information as the corporation may require.

(9) Within twenty-eight days of receipt of an application pursuant to this section, the corporation shall either approve or reject such application.

§ 2. This act shall take effect immediately.

PART C

Section 1. Paragraph 4 of subdivision (e) of section 24 of the tax law, as amended by chapter 683 of the laws of 2019, is amended to read as follows:

(4) Additional pool 2 - The aggregate amount of tax credits allowed in subdivision (a) of this section shall be increased by an additional four hundred twenty million dollars in each year starting in two thousand ten through two thousand twenty-four provided however, seven million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in two thousand thirteen and two thousand fourteen, twenty-five million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this article in each year starting in two thousand fifteen through two thousand twenty-four and five million dollars of the annual allocation shall be made available for the television writers' and directors' fees and salaries credit pursuant to section twenty-four-b of this article in each year starting in two thousand twenty through two thousand twenty-four. This amount shall be allocated by the governor's office for motion picture and television development among taxpayers in accordance with subdivision (a) of this section. If the commissioner of economic development determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the empire state film post production tax credit pursuant to section thirty-one of this article is insufficient to utilize the balance of unallocated empire state film post production tax credits from such pool, the remainder, after such pending

1 applications are considered, shall be made available for allocation in
2 the empire state film tax credit pursuant to this section, subdivision
3 twenty of section two hundred ten-B and subsection (gg) of section six
4 hundred six of this chapter. Also, if the commissioner of economic
5 development determines that the aggregate amount of tax credits avail-
6 able from additional pool 2 for the empire state film post production
7 tax credit have been previously allocated, and determines that the pend-
8 ing applications from eligible applicants for the empire state film
9 production tax credit pursuant to this section is insufficient to
10 utilize the balance of unallocated film production tax credits from such
11 pool, then all or part of the remainder, after such pending applications
12 are considered, shall be made available for allocation for the empire
13 state film post production credit pursuant to this section, subdivision
14 thirty-two of section two hundred ten-B and subsection (qq) of section
15 six hundred six of this chapter. The governor's office for motion
16 picture and television development must notify taxpayers of their allo-
17 cation year and include the allocation year on the certificate of tax
18 credit. Taxpayers eligible to claim a credit must report the allocation
19 year directly on their empire state film production credit tax form for
20 each year a credit is claimed and include a copy of the certificate with
21 their tax return. In the case of a qualified film that receives funds
22 from additional pool 2, no empire state film production credit shall be
23 claimed before the later of the taxable year the production of the qual-
24 ified film is complete, or the taxable year immediately following the
25 allocation year for which the film has been allocated credit by the
26 governor's office for motion picture and television development.
27 Provided, however, in the years two thousand twenty through two thousand
28 twenty-four, such credit shall first be used to provide assistance to
29 small businesses negatively impacted during the emergency declaration
30 relating to the COVID-19 outbreak. For the purposes of this section, a
31 small business shall be deemed to be one which is resident in this
32 state, independently owned and operated, not dominant in its field and
33 employs one hundred or less persons. This credit may be used against any
34 operating and capital expenses, including but not limited to: payroll,
35 marketing, inventory, insurance, employee assistance, training, and any
36 state or local taxes and fees. The credit under this subdivision shall
37 be allowed against the taxes imposed by articles nine-A and twenty-two
38 of this chapter. If the amount of the credit under this subdivision for
39 any taxable year exceeds the taxpayer's tax for such year, the excess
40 shall be treated as an overpayment of tax to be credited or refunded as
41 provided by law.

42 § 2. This act shall take effect immediately.

43 PART D

44 Section 1. Notwithstanding any other law, rule or regulation to the
45 contrary, the executive is hereby authorized to repurpose all monies of
46 the New York state urban development corporation, the environmental
47 facilities corporation, the dormitory authority of the state of New
48 York, the New York state energy research and development authority and
49 all other state resources as identified and needed by the executive to
50 fully fund programs created by this act.

51 § 2. This act shall take effect immediately.

52 PART E

Section 1. Section 657 of the tax law is amended by adding a new subsection (d) to read as follows:

(d) Automatic extension for small businesses affected by an emergency declaration. An automatic extension shall be granted to taxpayers during a declared emergency relating to the COVID-19 outbreak. Such extension shall be granted for filing a tax return or paying a tax otherwise required on April fifteenth, two thousand twenty. The length of such extension shall be one hundred eighty days from April fifteenth, two thousand twenty. Subsection (b) of this section shall not apply to persons granted an extension pursuant to this subsection. No penalties or interest shall be assessed or imposed upon a taxpayer during an extension granted pursuant to this subsection. For the purposes of this section, a small business shall be deemed to be one which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.

§ 2. Section 213 of the tax law is amended by adding a new subdivision 4 to read as follows:

4. Automatic extension for small businesses affected by an emergency declaration. An automatic extension shall be granted to taxpayers during a disease outbreak related declared emergency. Such extension shall be granted for filing a tax return or paying a tax required by this article. The length of such extension shall be one hundred eighty days from the date on which such filing or payment would otherwise be due. No penalties or interest shall be assessed or imposed upon a taxpayer during an extension granted pursuant to this subdivision. For the purposes of this section, a small business shall be deemed to be one which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.

§ 3. This act shall take effect immediately.

PART F

Section 1. The commissioner of the department of economic development shall develop and implement a "regulatory amnesty" period to allow for small businesses to remedy rules or regulation violations before any violations or sanctions are levied. Such regulatory amnesty period must be at least six months. If a small business remedies the violation within the time period established by the commissioner, such business shall not be subjected to fines or penalties.

§ 2. This act shall take effect immediately.

PART G

Section 1. Section 5 of part H of chapter 58 of the laws of 2019 amending the environmental conservation law, the alcoholic beverage control law, and the state finance law, relating to establishing guidelines for bag waste reduction, is amended to read as follows:

§ 5. This act shall take effect [~~March 1,~~ September 1, 2020.

§ 2. This act shall take effect immediately.

§ 4. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of

1 the legislature that this act would have been enacted even if such
2 invalid provisions had not been included herein.

3 § 5. This act shall take effect immediately provided, however, that
4 the applicable effective date of Parts A through G of this act shall be
5 as specifically set forth in the last section of such Parts.