

SENATE, No. 2473
STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MAY 11, 2020

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

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District 14 (Mercer and Middlesex)

SYNOPSIS

Requires EDA to provide low interest loans to qualified small businesses and not-for-profit corporations during state of emergency declared by Governor.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning certain loans administered by the New Jersey Economic Development Authority, amending P.L.1992, c.16 and P.L.2011, c.201, and repealing section 3 of P.L.2019, c.240.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 4 of P.L.1992, c.16 (C.34:1B-7.13) is amended to read as follows:
4. The authority may use the moneys in the fund to pay principal of, premium, if any, and interest on bonds or notes, which shall be entitled "Economic Recovery Fund Bonds or Notes," as appropriate, the proceeds, or net proceeds, of which shall be deposited into the fund, or used for purposes of the fund, and moneys in the fund, including money received from the sale of

bonds shall, in such manner as is determined by the authority, and pursuant to subsections d., e., and f. of this section, be used for the financing of projects as set forth in section 3 of P.L.1974, c.80 (C.34:1B-3) and to establish:

a. an economic growth account for business programs, which will invest in small and medium-size businesses that have the greatest potential for creating jobs and stimulating economic growth through such elements as a Statewide lending pool for small business, a business composite bond guarantee, a fund to further supplement the export finance program of the authority to provide direct loans and working capital necessary for New Jersey businesses to compete in the global market, real estate partnerships, a Statewide composite bond pool to assist municipalities in acquiring needed financing for capital expenditures, community-based assistance to assist municipalities in establishing local development corporations to stimulate economic development, a venture capital fund for start-up costs for businesses developing new concepts and inventions, a fund to assist businesses with expansion in such areas as manufacturing retooling to improve quality, to reduce production costs and to train employees to apply the latest technology, and a "Main Street Business Assistance Program" to provide guarantees and loans to small and mid-size businesses and not-for-profit corporations to stimulate the economy. Any loans provided by the authority to small-size businesses and not-for-profit corporations, throughout the duration of the public health emergency and state of emergency established under Executive Order No. 103 of 2020, shall be at a low rate of interest, as determined by the authority. The authority may promulgate rules and regulations for the effective implementation of the "Main Street Business Assistance Program." Notwithstanding any provision of

the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the authority may adopt, immediately upon filing with the Office of Administrative Law, such regulations as are necessary to implement the provisions of this act, which shall be effective for a period not to exceed 12 months following enactment, and may thereafter be amended, adopted, or readopted by the authority in accordance with the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). During periods of emergency declared by the Governor and for the duration of economic disruptions due to the emergency, the authority may use the economic growth account for the planning, designing, acquiring, constructing, reconstructing, improving, equipping, and furnishing by small and medium-size businesses and not-for-profit corporations of a project as defined in section 3 of P.L.1974, c. 80 (C.34:1B-3), including, but not limited to, grants for working capital and meeting payroll requirements, upon such terms and conditions as the authority shall deem reasonable;

b. an economic development infrastructure program account, which shall provide for the financing and development of infrastructure and transportation projects, including but not limited to ports, terminal and transit facilities, roads and airports, parking facilities used in connection with transit facilities, and related facilities, including public-private partnerships, that are integral to economic growth;

c. an account for a cultural, recreational, fine and performing arts, military and veterans memorial, historic preservation project and tourism facilities and improvements program, which shall provide for the financing and development of cultural, recreational, fine and performing arts, military and veterans memorial, historic preservation and tourism projects, including partnerships with public, private and nonprofit entities;

d. an account, into which shall be deposited an amount not less than \$45,000,000, out of the total amounts deposited or credited to the fund from the proceeds of the sale of Economic Recovery Fund Bonds or Notes, for the financing of capital facilities for primary and secondary schools in the State for the purpose of the renovation, repair or alteration of existing school buildings, the construction of new school buildings or the conversion of existing school buildings to other instructional purposes.

(1) Of the amount deposited in the account, not less than \$25,000,000 shall be deposited in the "Public School Facilities Code Compliance Loan Fund" established pursuant to section 4 of P.L.1993, c.102 (C.34:1B-7.23).

(2) Of the amount deposited in the account, not less than \$20,000,000 shall be deposited in the "Public School Facilities Loan Assistance Fund" established pursuant to section 5 of P.L.1993, c.102 (C.34:1B-7.24);

e. an environmental cleanup assistance account, into which shall be deposited an amount not less than \$10,000,000, out of the total amounts deposited or credited to the fund from the proceeds of the sale of Economic Recovery Fund Bonds or Notes, to provide financial assistance to the persons and other entities entitled to apply for financial assistance pursuant to P.L.1993, c.139; and

f. an account, into which shall be deposited an amount not less than \$15,000,000, out of the total amounts deposited or credited to the fund from the proceeds of the sale of Economic Recovery Fund Bonds or Notes, for the financing of shore restoration, maintenance, monitoring, protection and preservation projects pursuant to the shore protection master plan prepared by the Department of Environmental Protection pursuant to P.L.1978, c.157.

(cf: P.L.2020, c.8, s.2)

2. Section 1 of P.L.2011, c.201 (C.34:1B-241.1) is amended to read as follows:

1. As used in P.L.2011, c.201 (C.34:1B-241.1 et seq.):

"Authority" means the New Jersey Economic Development Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

"Department" means the Department of Agriculture established pursuant to R.S.4:1-1.

"Eligible farming operation" means two or more business entities that are engaged in farming operations in the State, that are applying together for participation in the small business loan program established pursuant to section 2 of [P.L.2019, c.240] P.L.2011, c.201 (C.34:1B-241.2), and that, at the time of the application, are independently owned and operated, participate in an agricultural commodity or product marketing and development program operated by the Department of Agriculture, and satisfy other criteria that may be established by the authority pursuant to [P.L.2019, c.240] P.L.2011, c.201 (C.34:1B-241.1 et seq.).

"Eligible operating expense" means the normal, day-to-day operating expenditures made by an eligible small business, including, but not limited to: payroll; rent; utilities; insurance; marketing expenses; and purchases of goods and services.

"Eligible small business" means a business entity that, at the time of application for participation in the small business loan program established pursuant to section 2 of P.L.2011, c.201 (C.34:1B-241.2), is independently owned and operated, operates primarily within this State, and which satisfies other criteria that may be established by the authority. "Eligible small business" shall include a qualified dairy [farmers and] farmer, an eligible farming [operations] operation, and a qualified not-for-profit corporation.

"Farm equipment" means equipment used directly for farming operations.

"Farming operations" mean any activities connected to the commercial growing, harvesting, processing, producing, or raising of agricultural products in the State, including crops, dairy animals, livestock, fur-bearing animals, poultry, bees, crops used in fermented alcoholic beverages and wine, and any products therefrom, including organic agricultural products; aquacultural products; horticultural products; and silviculture products.

"Qualified dairy farmer" means a person or business entity that produces valued-added dairy products and that, at the time of application for participation in the small business loan program and receipt of a loan under the program, is independently owned and operated, operates primarily within this State, and satisfies other criteria that may be established by the authority.

"Qualified not-for-profit corporation" means a not-for-profit corporation that the authority determines meets the identical guarantee and loan eligibility criteria established under the "Main Street Business Assistance Program," pursuant to subsection a. of section 4 of P.L.1992, c.16 (C.34:1B-7.13).

"Value-added dairy product" means a dairy product created by a qualified dairy farmer by means of a change in the physical state of a dairy commodity, and shall include, but not be limited to, cheese, cultured sour cream, yogurt, kefir, butter, ice cream, evaporated milk, condensed milk, and concentrated milk.

(cf: P.L.2019, c.240, s.1)

3. Section 2 of P.L.2011, c.201 (C.34:1B-241.2) is amended to read as follows:

2. a. The authority shall maintain and administer a small business loan program for the purpose of providing loans to eligible small businesses. The authority shall consult with the department in administering the small business loan program as it applies to: (1) an eligible small business that is an eligible farming operation; (2) defining the types of dairy products that shall be considered as value-added dairy products under the small business loan program, not inconsistent with section 1 of [P.L.2019, c.240] P.L.2011, c.201 (C.34:1B-241.1); (3) developing small business loan program guidelines for qualified dairy farmers and eligible farming operations; and (4) developing materials to provide to qualified dairy farmers seeking to expand value-added dairy production in this State.

b. (1) Loans made through the small business loan program may be made to an eligible small business. The loan funds may be applied to any aspect of the eligible small business that supports its capital purchases, employee training, and salaries for new positions as determined by the authority.

(2) Notwithstanding paragraph (1) of [subsection b. of this section] this subsection, loans made by the authority to an eligible farming operation may only be applied to aspects of the eligible farming operation that support the farming operation's farm equipment purchases, as determined by the authority. Farm equipment purchased from loan funds made pursuant to [P.L.2019, c.240] P.L.2011, c.201 (C.34:1B-241.1 et seq.) shall be used by all of the business entities in the eligible farming operation.

(3) Two or more business entities engaged in farming operations in the State seeking to participate in the loan program established pursuant to subsection a. of this section shall submit a joint application in a form as the authority shall require and shall include information as the authority determines is necessary in consideration of a loan authorized pursuant to [P.L.2019, c.240] P.L.2011, c.201 (C.34:1B-241.1 et seq.).

(4) Notwithstanding paragraph (1) of this subsection, loans made by the authority to an eligible small business, throughout the duration of the public health emergency and state of emergency established under Executive Order No. 103 of 2020, shall only be used by the eligible small business for eligible operating expenses.

c. (1) In order to receive a loan pursuant to the small business loan program, a business, at the time of application, shall provide proof that it is an eligible small business and shall enter into a small business loan agreement with the authority.

(2) In order to receive a loan from the authority pursuant to [P.L.2019, c.240] P.L.2011, c.201 (C.34:1B-241.1 et seq.), a business entity engaged in farming operations in the State, at the time of application, shall provide proof, in a manner determined by the authority, that it and at least one other business entity meet the requirements to be an eligible farming operation, including, but not limited to, proof that each business entity is engaged in farming operations in the State and will use the farm equipment purchased with the loan funds.

d. The authority shall review and may approve applications for the small business loan program.

e. A business seeking to participate in the small business loan program shall submit an application in a form as the authority shall require. The application shall include information the authority shall determine is necessary in consideration of the provisions of P.L.2011, c.123 (C.52:14B-21.1 et seq.).

f. Loans to an eligible small business under this section shall:

(1) be made pursuant to a small business loan agreement made pursuant to subsection c. of this section;

(2) bear interest at rates and terms deemed appropriate by the authority, except for loans made throughout the duration of the public health emergency and state of emergency established under Executive Order No. 103 of 2020, which shall be made at a low rate of interest, as determined by the authority; and

(3) contain other terms and conditions considered appropriate by the authority that are consistent with the purposes of P.L.2011, c.201 (C.34:1B-241.1 et seq.) and with rules and regulations adopted by the authority pursuant to section 3 of P.L.2011, c.201 (C.34:1B-241.3).

The provisions of a loan agreement with an eligible farming operation shall include, but need not be limited to, a statement of an eligible farming operation's proportional shares of ownership, its farm equipment usage and maintenance responsibilities, and its loan repayment responsibilities for any loan proceeds received under the loan program.

g. The authority may, in its discretion, require an eligible small business that receives a loan under the small business loan program administered pursuant to P.L.2011, c.201 (C.34:1B-241.1 et seq.) to submit an audited financial statement to the authority in order to ensure the business's continued vitality. An audited financial statement from an eligible farming operation shall include each business entity in the eligible farming operation using the farm equipment.

h. The authority may, either through the adoption of rules and regulations, or through the terms of the small business loan agreement made pursuant to subsection c. of this section, establish terms governing the incidence of default by a recipient of a loan under the small business loan program, administered pursuant to P.L.2011, c.201 (C.34:1B-241.1 et seq.).

i. In determining whether to provide a loan to an eligible small business, the authority shall consider, along with other criteria that the authority in its discretion deems appropriate, whether the business commits to increasing its full-time employment level in the State.
(cf: P.L.2019, c.240, s.2)

4. Section 3 of P.L.2011, c.201 (C.34:1B-241.3) is amended to read as follows:

3. The authority may adopt such rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to effectuate the purposes of P.L.2011, c.201 (C.34:1B-241.1 et seq.). The authority shall consult with the department concerning the adoption of rules and regulations applicable to loans made to qualified dairy farmers and eligible farming operations.
(cf: P.L.2011, c.201, s.3)

5. Section 3 of P.L.2019, c.240 is repealed.

6. This act shall take effect immediately.

STATEMENT

This bill expands a small business loan program (loan program) administered by the New Jersey Economic Development Authority (authority) to include an "eligible not-for-profit corporation," as that term is defined in the bill, as a qualified small business eligible for participation in the loan program. Loans offered under the loan program to qualified small businesses during the Coronavirus disease of 2019 are to be made at a low rate of interest, as determined by the authority. Under this loan program, the loan proceeds are only to be used by eligible small businesses during this period for an "eligible operating expense," as that term is defined in the bill.

Further, the bill provides that loans offered during the Coronavirus disease of 2019 to small-size businesses and not-for-profit corporations qualifying under the "Main Street Business Assistance Program" (assistance program), also administered by the authority, are to be made at a low rate of interest, as determined by the authority.

The bill transfers to section 3 of P.L.2011, c.201 (C.34:1B-241.3) existing rulemaking authority added by section 3 of P.L.2019, c.240 and repeals this duplicative provision.