

SENATE No. 2643

The Commonwealth of Massachusetts

PRESENTED BY:

Diana DiZoglio

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a Massachusetts Paycheck Protection Program (PPP) for businesses ineligible for the comparable federal PPP.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Diana DiZoglio</i>	<i>First Essex</i>	
<i>Lenny Mirra</i>	<i>2nd Essex</i>	<i>4/6/2020</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>4/6/2020</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>4/6/2020</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>4/6/2020</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>4/7/2020</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>	<i>4/7/2020</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>4/7/2020</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>	<i>4/8/2020</i>
<i>James T. Welch</i>	<i>Hampden</i>	<i>4/8/2020</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>	<i>4/8/2020</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>4/8/2020</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>4/8/2020</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>4/10/2020</i>
<i>Nick Collins</i>	<i>First Suffolk</i>	<i>4/27/2020</i>

SENATE No. 2643

By Ms. DiZoglio, a petition (accompanied by bill, Senate, No. 2643) (subject to Joint Rule 12) of Diana DiZoglio, Lenny Mirra, Patricia D. Jehlen, Adam G. Hinds and other members of the General Court for legislation to establish a Massachusetts Paycheck Protection Program (PPP) for businesses ineligible for the comparable federal PPP. Community Development and Small Businesses.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act establishing a Massachusetts Paycheck Protection Program (PPP) for businesses ineligible for the comparable federal PPP.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide comparable aid, relief and economic security to lawful Massachusetts businesses otherwise ineligible for the federal Paycheck Protection Program, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety, health and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1: DEFINITIONS

2 Section 1. The following words as used in this Act, unless the context otherwise requires,
3 shall have the following meanings:-

4 “Agency”, such public or quasi-public agency as shall be deemed appropriate by the
5 Department of Housing and Economic Development to administer the program established under
6 this Act.

7 “Covered loan”, a loan made under this Act during the covered period.

8 “Covered mortgage obligation”, any indebtedness or debt instrument incurred in the
9 ordinary course of business that: (a) is a liability of the borrower; (b) is a mortgage on real or
10 personal property; and (c) was incurred before February 15, 2020.

11 “Covered period”, the period beginning on February 15, 2020, and ending on June 30,
12 2020.

13 “Covered rent obligation”, rent obligated under a leasing agreement in force before
14 February 15, 2020.

15 “Covered utility payment”, payment for a service for the distribution of electricity, gas,
16 water, transportation, telephone, or internet access for which service began before February 15,
17 2020.

18 “Determination period”, the 8-week period beginning on the date of the origination of a
19 covered loan.

20 “Director”, the Director of the Agency.

21 “Eligible independent contractor”, an individual who: (a) operates as an independent
22 contractor in the Commonwealth; and (b) is not eligible for the Paycheck Protection Program
23 established under the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-
24 136).

25 “Eligible recipient”, any Massachusetts business concern that: (a) was in operation on
26 February 15, 2020; (b) employs not more than 500 employees; (c) is in good standing with the
27 Office of the Secretary of State of the Commonwealth; (d) is in good standing with the

28 Massachusetts Department of Revenue; (e) is not engaged in the trade or business of conducting
29 activities governed by sections 39 through 50, inclusive, of chapter 3 of the General Laws; and
30 (f) is not eligible for the Paycheck Protection Program established under the Coronavirus Aid,
31 Relief, and Economic Security Act (Public Law 116-136). For purposes of determining whether
32 a business concern employs not more than 500 employees, the term “employee” includes
33 individuals employed on a full-time, part-time, or other basis.

34 “Eligible self-employed individual”, an individual who: (a) regularly carries on any trade
35 or business within the meaning of section 1402 of the Internal Revenue Code of 1986, in the
36 Commonwealth; and (b) is not eligible for the Paycheck Protection Program established under
37 the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136).

38 “Eligible sole proprietor”, an individual who: (a) operates as a sole proprietorship in the
39 Commonwealth; and (b) is not eligible for the Paycheck Protection Program established under
40 the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136).

41 “Loan recipient”, an eligible recipient who has received a covered loan.

42 “Payroll costs”, (a) the sum of payments of any compensation with respect to employees
43 that is a: (1) salary, wage, commission, or similar compensation; (2) payment of cash tip or
44 equivalent; (3) payment for vacation, parental, family, medical, or sick leave; (4) allowance for
45 dismissal or separation; (5) payment required for the provisions of group health care benefits,
46 including insurance premiums; (6) payment of any retirement benefit; or (7) payment of
47 Massachusetts or local tax assessed on the compensation of employees; and (b) the sum of
48 payments of any compensation to or income of an eligible sole proprietor or eligible independent
49 contractor that is a wage, commission, income, net earnings from self-employment, or similar

50 compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for
51 the covered period; and (c) shall not include: (1) the compensation of an individual employee in
52 excess of an annual salary of \$100,000, as prorated for the covered period; (2) taxes imposed or
53 withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered
54 period; (3) any compensation of an employee whose principal place of residence is outside of the
55 United States; or (4) any compensation paid: (i) which has been funded by any other federal,
56 state or local program for which no repayment is required; or (ii) for which a credit is allowed
57 against federal, state or local taxes that would otherwise be payable.

58 SECTION 2: PAYCHECK PROTECTION PROGRAM

59 Section 2. (a) The Agency is empowered to the extent and in such amounts as provided
60 through appropriation to make loans to eligible recipients for the purpose of providing aid, relief
61 and economic security to those business concerns ineligible for the same under the Coronavirus
62 Aid, Relief, and Economic Security Act (Public Law 116-136) in response to substantial
63 economic injury suffered as a result of 2019 Novel Coronavirus (2019-nCoV). There shall be
64 appropriated such additional amount necessary for salaries and expenses of the Agency related to
65 administering the program established under this Act.

66 (b) Not later than 180 days after the date of enactment of this Act, the Director shall
67 submit to the Department of Housing and Economic Development, the Joint Committee on Ways
68 and Means, and the clerks of the Senate and the House of Representatives a detailed expenditure
69 plan for using the amounts appropriated to the Agency under subsection (a).

70 (c) Not later than 15 days after the date on which a loan is made under this section, the
71 Agency shall register the loan using the TIN (as defined in section 7701 of the Internal Revenue

72 Code of 1986) assigned to the borrower, if applicable, otherwise using such business registration
73 number as may be assigned to the borrower by the Office of the Secretary of State of the
74 Commonwealth.

75 (d)(1) During the covered period, eligible sole proprietors, eligible independent
76 contractors, and eligible self-employed individuals shall be eligible to receive a covered loan.

77 (2) An eligible sole proprietor, eligible independent contractor, or eligible self-employed
78 individual seeking a covered loan shall submit such documentation as is necessary to establish
79 such individual as eligible, including payroll tax filings reported to the Internal Revenue Service,
80 Forms 1099–MISC, and income and expenses from the sole proprietorship, as determined by the
81 Director.

82 (e) During the covered period, with respect to a covered loan, the maximum loan amount
83 shall be the lesser of:

84 (1) the product obtained by multiplying:

85 (i) the average total monthly payments by the applicant for payroll costs incurred during
86 the 1-year period before the date on which the loan is made, except that, in the case of an
87 applicant that has been in operation for less than 1-year, the average total monthly payments for
88 payroll shall be for such time as the application has been in operation; by

89 (ii) 2.5; or

90 (2) if requested by an otherwise eligible recipient that was not in business during the
91 period beginning on February 15, 2019, and ending on June 30, 2019, the product obtained by
92 multiplying:

93 (i) the average total monthly payments by the applicant for payroll costs incurred during
94 the period beginning on January 1, 2020, and ending on February 29, 2020; by

95 (ii) 2.5; or

96 (3) \$10,000,000.

97 (f) During the covered period, an eligible recipient may use the proceeds of the covered
98 loan for:

99 (1) payroll costs;

100 (2) costs related to the continuation of group health care benefits during periods of paid
101 sick, medical, or family leave, and insurance premiums;

102 (3) employee salaries, commissions, or similar compensations;

103 (4) payments of interest on any mortgage obligation (which shall not include any
104 prepayment of or payment of principal on a mortgage obligation);

105 (5) rent (including rent under a lease agreement);

106 (6) utilities; and

107 (7) interest on any other debt obligations that were incurred before the covered period.

108 Notwithstanding the waiver of the personal guarantee requirement or collateral under
109 subsection (i), the Director shall have no recourse against any individual shareholder, member, or
110 partner of an eligible recipient of a covered loan for nonpayment of any covered loan, except to

111 the extent that such shareholder, member, or partner uses the covered loan proceeds for a
112 purpose not authorized under this subsection (f).

113 (g) An eligible recipient applying for a covered loan shall make a good faith certification:

114 (1) that the uncertainty of current economic conditions makes necessary the loan request
115 to support the ongoing operations of the eligible recipient;

116 (2) acknowledging that funds will be used to retain workers and maintain payroll or make
117 mortgage payments, lease payments, and utility payments;

118 (3) that the eligible recipient does not have an application pending for a loan for the same
119 purpose and duplicative of amounts applied for or received under a covered loan; and

120 (4) during the period beginning on February 15, 2020, and ending on December 31, 2020,
121 that the eligible recipient has not received amounts for the same purpose and duplicative of
122 amounts applied for or received under a covered loan.

123 (h) During the covered period, with respect to a covered loan, the Director shall collect
124 no fee.

125 (i) During the covered period, with respect to a covered loan:

126 (1) no personal guarantee shall be required for the covered loan; and

127 (2) no collateral shall be required for the covered loan.

128 (j) With respect to a covered loan that has a remaining balance after reduction based on
129 the loan forgiveness amount under section 3 of this Act, the covered loan shall have a maximum

130 maturity of 10 years from the date on which the borrower applies for loan forgiveness under that
131 section.

132 (k) A covered loan shall bear an interest rate not to exceed 4 percent.

133 (l) During the covered period, the Director shall provide complete payment deferment
134 relief for loan recipients for a period of not less than 6 months, including payment of principal,
135 interest, and fees, and not more than 1 year.

136 (m) Notwithstanding any other provision of law, there shall be no prepayment penalty for
137 any payment made on a covered loan.

138 SECTION 3: LOAN FORGIVENESS

139 Section 3. (a) A loan recipient shall be eligible for forgiveness of indebtedness on a
140 covered loan in an amount equal to the sum of the following costs incurred and payments made
141 during the determination period:

142 (1) payroll costs;

143 (2) any payment of interest on any covered mortgage obligation (which shall not include
144 any prepayment of or payment of principal on a covered mortgage obligation);

145 (3) any payment on any covered rent obligation; and

146 (4) any covered utility payment.

147 (b)(1) The amount of loan forgiveness under this section shall not exceed the principal
148 amount of the financing made available under the applicable covered loan.

149 (2) The amount of loan forgiveness under this section shall be reduced, but not increased,
150 by multiplying the amount described in subsection (a) by the quotient obtained by dividing:

151 (i) the average number of full-time equivalent employees per month employed by the
152 loan recipient during the determination period; by

153 (ii)(I) at the election of the borrower:

154 (aa) the average number of full-time equivalent employees per month employed by the
155 loan recipient during the period beginning on February 15, 2019, and ending on June 30, 2019;

156 or

157 (bb) the average number of full-time equivalent employees per month employed by the
158 loan recipient during the period beginning on January 1, 2020, and ending on February 29, 2020;

159 or

160 (II) in the case of a loan recipient that is a seasonal employer, as determined by the
161 Director, the average number of full-time equivalent employees per month employed by the loan
162 recipient during the period beginning on February 15, 2019, and ending on June 30, 2019.

163 For purposes of this paragraph (2), the average number of full-time equivalent employees
164 shall be determined by calculating the average number of full-time equivalent employees for
165 each pay period falling within a month.

166 (3)(i) The amount of loan forgiveness under this section shall be reduced by the amount
167 of any reduction in total salary or wages of any employee described in subparagraph (ii) of this
168 paragraph 3 during the determination period that is in excess of 25 percent of the total salary or

169 wages of the employee during the most recent full quarter during which the employee was
170 employed before the determination period.

171 (ii) An employee described in this subparagraph is any employee who did not receive,
172 during any single pay period during 2019, wages or salary at an annualized rate of pay in an
173 amount more than \$100,000.

174 (4)(i) In a circumstance described in subparagraph (ii) of this paragraph 4, the amount of
175 loan forgiveness under this section shall be determined without regard to a reduction in the
176 number of full-time equivalent employees of a loan recipient or a reduction in the salary of 1 or
177 more employees of the loan recipient, as applicable, during the period beginning on February 15,
178 2020, and ending on the date that is 30 days after the date of enactment of this Act.

179 (ii) A circumstance described in this subparagraph is a circumstance:

180 (I) in which:

181 (aa) during the period beginning on February 15, 2020, and ending on the date that is 30
182 days after the date of enactment of this Act, there is a reduction, as compared to February 15,
183 2020, in the number of full-time equivalent employees of the loan recipient; and

184 (bb) not later than June 30, 2020, the eligible employer has eliminated the reduction in
185 the number of full-time equivalent employees;

186 (II) in which:

187 (aa) during the period beginning on February 15, 2020, and ending on the date that is 30
188 days after the date of enactment of this Act, there is a reduction, as compared to February 15,
189 2020, in the salary or wages of 1 or more employees of the loan recipient; and

190 (bb) not later than June 30, 2020, the eligible employer has eliminated the reduction in
191 the salary or wages of such employees; or

192 (III) in which the events described in clause (I) and (II) occur.

193 (5) The Agency may prescribe regulations granting de minimis exemptions from the
194 requirements under this subsection.

195 (c) A loan recipient seeking loan forgiveness under this section shall submit to the
196 Agency an application, which shall include:

197 (1) documentation verifying the number of full-time equivalent employees on payroll and
198 pay rates for the periods described in subsection (b), including:

199 (i) payroll tax filings reported to the Internal Revenue Service; and

200 (ii) Massachusetts income, payroll, and unemployment insurance filings;

201 (2) documentation, including cancelled checks, payment receipts, transcripts of accounts,
202 or other documents verifying payments on covered mortgage obligations, payments on covered
203 lease obligations, and covered utility payments;

204 (3) a certification from a representative of the loan recipient authorized to make such
205 certifications that:

206 (i) the documentation presented is true and correct; and

207 (ii) the amount for which forgiveness is requested was used to retain employees, make
208 interest payments on a covered mortgage obligation, make payments on a covered rent
209 obligation, or make covered utility payments; and

210 (4) any other documentation the Director determines necessary.

211 (d) No loan recipient shall receive forgiveness under this section without submitting to
212 the Agency the documentation required under subsection (c).

213 (e) Not later than 60 days after the date on which the Agency receives an application for
214 loan forgiveness under this section from a loan recipient, the Agency shall issue a decision on the
215 application.

216 (f) For purposes of the Internal Revenue Code of 1986, any amount which (but for this
217 subsection) would be includible in gross income of the loan recipient by reason of forgiveness
218 described in subsection (a) shall be excluded from gross income.

219 (g) The cancellation of indebtedness on a covered loan under this section shall not
220 otherwise modify the terms and conditions of the covered loan.

221 SECTION 4: REGULATIONS

222 Section 4. Not later than 30 days after the date of enactment of this Act, the Agency shall
223 issue guidance and regulations implementing this Act.

224 SECTION 5: EFFECTIVE DATE

225 Section 5. This Act shall take effect upon its passage.