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:

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

SECTION 1: DEFINITIONS

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

“Agency”, such public or quasi-public agency as shall be deemed appropriate by the Department of Housing and Economic Development to administer the program established under this Act.
“Covered loan”, a loan made under this Act during the covered period.

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

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

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

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

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

“Director”, the Director of the Agency.

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

“Eligible recipient”, any Massachusetts business concern that: (a) was in operation on February 15, 2020; (b) employs not more than 500 employees; (c) is in good standing with the Office of the Secretary of State of the Commonwealth; (d) is in good standing with the
Massachusetts Department of Revenue; (e) is not engaged in the trade or business of conducting activities governed by sections 39 through 50, inclusive, of chapter 3 of the General Laws; and (f) is not eligible for the Paycheck Protection Program established under the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136). For purposes of determining whether a business concern employs not more than 500 employees, the term “employee” includes individuals employed on a full-time, part-time, or other basis.

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

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

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

“Payroll costs”, (a) the sum of payments of any compensation with respect to employees that is a: (1) salary, wage, commission, or similar compensation; (2) payment of cash tip or equivalent; (3) payment for vacation, parental, family, medical, or sick leave; (4) allowance for dismissal or separation; (5) payment required for the provisions of group health care benefits, including insurance premiums; (6) payment of any retirement benefit; or (7) payment of Massachusetts or local tax assessed on the compensation of employees; and (b) the sum of payments of any compensation to or income of an eligible sole proprietor or eligible independent contractor that is a wage, commission, income, net earnings from self-employment, or similar
compensation and that is in an amount that is not more than $100,000 in 1 year, as prorated for the covered period; and (c) shall not include: (1) the compensation of an individual employee in excess of an annual salary of $100,000, as prorated for the covered period; (2) taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period; (3) any compensation of an employee whose principal place of residence is outside of the United States; or (4) any compensation paid: (i) which has been funded by any other federal, state or local program for which no repayment is required; or (ii) for which a credit is allowed against federal, state or local taxes that would otherwise be payable.

SECTION 2: PAYCHECK PROTECTION PROGRAM

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

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

(c) Not later than 15 days after the date on which a loan is made under this section, the Agency shall register the loan using the TIN (as defined in section 7701 of the Internal Revenue
Code of 1986) assigned to the borrower, if applicable, otherwise using such business registration number as may be assigned to the borrower by the Office of the Secretary of State of the Commonwealth.

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

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

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

(1) the product obtained by multiplying:

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

(ii) 2.5; or

(2) if requested by an otherwise eligible recipient that was not in business during the period beginning on February 15, 2019, and ending on June 30, 2019, the product obtained by multiplying:
(i) the average total monthly payments by the applicant for payroll costs incurred during
the period beginning on January 1, 2020, and ending on February 29, 2020; by
(ii) 2.5; or
(3) $10,000,000.

(f) During the covered period, an eligible recipient may use the proceeds of the covered
loan for:
(1) payroll costs;
(2) costs related to the continuation of group health care benefits during periods of paid
sick, medical, or family leave, and insurance premiums;
(3) employee salaries, commissions, or similar compensations;
(4) payments of interest on any mortgage obligation (which shall not include any
prepayment of or payment of principal on a mortgage obligation);
(5) rent (including rent under a lease agreement);
(6) utilities; and
(7) interest on any other debt obligations that were incurred before the covered period.

Notwithstanding the waiver of the personal guarantee requirement or collateral under
subsection (i), the Director shall have no recourse against any individual shareholder, member, or
partner of an eligible recipient of a covered loan for nonpayment of any covered loan, except to
the extent that such shareholder, member, or partner uses the covered loan proceeds for a purpose not authorized under this subsection (f).

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

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

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

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

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

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

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

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

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

(j) With respect to a covered loan that has a remaining balance after reduction based on the loan forgiveness amount under section 3 of this Act, the covered loan shall have a maximum
maturity of 10 years from the date on which the borrower applies for loan forgiveness under that section.

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

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

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

SECTION 3: LOAN FORGIVENESS

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

(1) payroll costs;

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

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

(4) any covered utility payment.

(b)(1) The amount of loan forgiveness under this section shall not exceed the principal amount of the financing made available under the applicable covered loan.
(2) The amount of loan forgiveness under this section shall be reduced, but not increased, by multiplying the amount described in subsection (a) by the quotient obtained by dividing:

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

(ii)(l) at the election of the borrower:

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

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

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

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

(3)(i) The amount of loan forgiveness under this section shall be reduced by the amount of any reduction in total salary or wages of any employee described in subparagraph (ii) of this paragraph 3 during the determination period that is in excess of 25 percent of the total salary or
wages of the employee during the most recent full quarter during which the employee was employed before the determination period.

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

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

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

(I) in which:

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

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

(II) in which:

(aa) during the period beginning on February 15, 2020, and ending on the date that is 30 days after the date of enactment of this Act, there is a reduction, as compared to February 15, 2020, in the salary or wages of 1 or more employees of the loan recipient; and
(bb) not later than June 30, 2020, the eligible employer has eliminated the reduction in the salary or wages of such employees; or

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

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

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

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

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

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

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

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

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

(ii) the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and
(4) any other documentation the Director determines necessary.

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

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

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

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

SECTION 4: REGULATIONS

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

SECTION 5: EFFECTIVE DATE

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