



WEST VIRGINIA LEGISLATURE
STATE CAPITOL
CHARLESTON, WEST VIRGINIA 25305

May 1, 2020

Honorable Jim Justice
Governor's Office
1900 Kanawha Blvd. E.
Charleston, WV 25305

Governor Justice:

The undersigned members of the West Virginia Senate write today to urge you to call an extraordinary session of the 84th Legislature, as soon as practicable, to enact the "Help Small Business Win Big Act of 2020" a small business emergency assistance grant program that will provide short-term cash flow support to the state's small businesses and increase overall business confidence during the unprecedented economic disruption caused by the Coronavirus (COVID-19) outbreak.

On March 16, 2020, you initiated efforts to contain the spread of COVID-19 by declaring a State of Emergency in West Virginia. Subsequent containment measures were announced, including the closure of all restaurants and bars, gyms and recreation facilities, barbershops, hair salons, and nail salons. These restrictions culminated with the issuance of a Stay at Home Order for West Virginians on March 23, 2020. While these measures are consistent with similar measures being taken nationally that are expected to limit the public's exposure to COVID-19, there is already and will continue to be an adverse economic impact on our state's economy, particularly small businesses.

Small enterprises (businesses and non-profits) (SBEs), and residents employed by these businesses, are facing unprecedented economic challenges as businesses have difficulties meeting payroll obligations and supporting basic operating expenses. These challenges are only expected to increase during a prolonged period of restricted operation or closing. Without a source of immediate relief, small businesses are being forced to furlough or lay off employees.

West Virginia received \$1.25 billion from funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). The United States Department of the Treasury has issued guidance that interprets these limitations on the permissible use of fund payments. The requirement that expenditures be incurred "due to" the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency. These may include expenditures incurred to

allow the State to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures. The Department of Treasury's guidance includes examples of eligible expenditures including expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, including the expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.

It is urgently necessary for the state to take immediate action to utilize CARES Act funding to address this dire economic crisis by providing the state's SBEs with short-term economic relief. This is especially important since SBEs employ approximately 280,000 West Virginians or 49% of the private workforce.

To that end we propose that of the \$1.25 billion available to the state from CARES Act payments, West Virginia should commit at least \$500 million to the "Help Small Business Win Big Act of 2020" to provide SBE's with unrestricted payroll and working capital support; excluding capital expenses, including construction. "Help Small Business Win Big Act of 2020" grants would provide short-term, immediate payroll and working capital support to SBE's between one and 10 full-time employees (FTEs) facing prolonged operating restrictions or closure due to the COVID-19 outbreak. We believe this measure will help to stabilize their operations and minimize any potential furloughs and/or layoffs.

Key elements of a small business emergency assistance grant program authorized by the "Help Small Business Win Big Act of 2020" should include:

- Eligible businesses may receive \$2,000 per FTE, with the calculation based on a wage report for the payroll period immediately prior to March 16, 2020. The minimum grant amount (per application) is \$2,000; and maximum grant amount (per application) is \$20,000;
- Of the \$500 million total Small Business Emergency Assistance Grants funding commitment, \$300 million of program funds should set aside for SBEs with five or fewer FTEs; however, these funds may be released back to a general pool if demand from SBEs with five or fewer FTEs has decreased significantly and demand from SBEs over five employees remains high;
- Because it is likely that the demand for the grant funding may exceed the total available funding, funding should be on a first-come, first-served basis, with a priority to be given to SBEs that have not received funds from the Paycheck Protection Program authorized by sections 1102 and 1106 of the CARES Act;
- An eligible SBE must have a physical commercial location in the State (e.g., an office, a physical point of sales, a warehouse, manufacturing facility, farm etc.);
- An eligible SBE must operate within the following industries as defined by the SBE's two-digit North American Industry Classification ("NAICS") code: Retail; Accommodation & food services; Arts, entertainment & recreation; Agriculture (restricted to businesses with 3-digit NAICS of 111 and 112), and Other services (restricted to businesses with 3-digit

NAICS of 811 and 812). Non-profits entities with the following designations will also be permitted to receive grant funding: 501(c)(3), 501(c)(4), and 501(c)(7);

- Prohibited businesses should include, but are not limited to: gambling or gaming activities (unless the business receives less than 50% of its revenues from gambling or gaming); the conduct or purveyance of “adult” (i.e., pornographic, lewd, prurient, obscene or otherwise similarly disreputable) activities, services, products or materials (including nude or semi-nude performances or the sale of sexual aids or devices); any auction or bankruptcy or fire or “lost-our-lease” or “going-out-of-business” or similar sale; sales by transient merchants, Christmas tree sales or other outdoor storage; any activity constituting a nuisance; or any illegal purposes;
- Require the CEO/equivalent officer of the eligible SBE to self-certify that the firm:
 - Will make a best effort not to furlough or lay off any individuals from the time of application through six months after the end of the declared state of emergency (SBEs that have already furloughed or laid off workers must make a best-effort pledge to re-hire those workers as soon as possible) – any material breach of its best efforts certification may result in the state seeking repayment of the grant;
 - Has been negatively impacted by the COVID-19 declared state of emergency on or after March 16, 2020 (e.g., has been temporarily shut down, has been required to reduce hours, has had at least a 20 percent drop in revenue, has been materially impacted by employees who cannot work due to the outbreak, or has a supply chain that has materially been disrupted and therefore slowed firm-level production); and
 - Has a material financial need that cannot be overcome without the grant of emergency relief funds at this time (e.g., does not have significant cash reserves that can support the SBE during this period of economic disruption).
- An eligible SBE must show evidence, at the time of application, that the SBE is registered to do business in the State of West Virginia, is in good standing with WorkForce WV and does not owe any taxes. The grant should be subject to repayment if the certification is not correct.
- Due to financial hardship, no fees should be required for this program.

We believe the “Help Small Business Win Big Act of 2020” is West Virginia’s small businesses best chance at staving off disaster. We know that if you put your leadership and the influence of the Governor’s office behind this, together we can pass this proposal for you to sign into law.

We look forward to working with you to pass meaningful legislation assisting West Virginia small businesses during this unprecedented economic crisis in an extraordinary session of the Legislature. Thank you for your consideration.

Sincerely,

Senator Roman Prezioso, Jr.

Senator Corey Palumbo

Senator Bob Beach

Senator Stephen Baldwin

Senator Doug Facemire

Senator Paul Hardesty

Senator William Ihlenfeld

Senator Glenn Jeffries

Senator Richard Lindsay

Senator Bob Plymale

Senator John Unger

Senator Mike Romano

Senator Mike Woelfel

Senator Ron Stollings