ASSEMBLY, No. 3965

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 1, 2020

Sponsored by:
Assemblyman WILLIAM F. MOEN, JR.
District 5 (Camden and Gloucester)
Assemblywoman CAROL A. MURPHY
District 7 (Burlington)

SYNOPSIS

Expands existing EDA loan program to include small producers of alcoholic beverages.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 5/4/2020)

AN ACT concerning loans to small producers of alcoholic beverages and amending P.L.2019, c.34.

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

1. Section 1 of P.L.2019, c.34 (C.34:1B-266) is amended to read as follows:

1. As used in P.L.2019, c.34 (C.34:1B-266 et seq.):

"Authority" shall have the same meaning as provided in section 3 of P.L.1974, c.80 (C.34:1B-3).

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

"Division" means the Division of Alcoholic Beverage Control in the Department of Law and Public Safety.

"Pandemic" means an outbreak of a disease of unusual virulence characterized by very widespread growth or extent, which has a significant impact on economic activity within this State, resulting in the Governor declaring a public health emergency, pursuant to section 3 of P.L.2005, c.222 (C.26:13-3), and a state of emergency, pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), within this State.

"Qualified small producer capital expense" means amounts paid by a small producer of alcoholic beverages for the purchase of items of plant, machinery, equipment, or any other item, for use by the small producer of alcoholic beverages within the State in the manufacture, sale, or both, of alcoholic beverages. For the purposes of this section, "qualified small producer capital expense" includes, but shall not be limited to:

a. amounts actually paid by the small producer of alcoholic beverages; and

b. amounts promised to be paid under firm purchase contracts actually executed during the tax year; provided, however, that a small producer of alcoholic beverages shall not claim a qualified small producer capital expense that was claimed by the small producer of alcoholic beverages in a prior tax year.

"Qualified vineyard or winery capital expense" means all expenditures made by an eligible vineyard or winery for land acquisition or improvement, infrastructure acquisition or modernization, and the purchase or modernization of machinery and equipment, including:

a. barrels;

b. bins;

c. bottling equipment;

d. canopy management machines;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

e. capsuling equipment;

f. chemicals;

g. corkers;

h. crushers;

i. deer control fencing;

j. destemmers;

k. fermenters or other recognized fermentation devices;

l. fertilizer and soil amendments;

m. filters;

n. fruit harvesters;

o. fruit plants;

p. hoses;

q. irrigation equipment;

r. labeling equipment;

s. lugs;

t. mowers;

u. poles;

v. posts;

w. presses;

x. pruning equipment;

y. pumps;

z. refractometers;

aa. refrigeration equipment;

bb. seeders;

cc. soil;

dd. small tools;

ee. tanks;

ff. tractors;

gg. vats;

hh. weeding and spraying equipment;

ii. wine tanks;

jj. wire; and

kk. any other items as approved by the authority in consultation with the department.

"Qualified vineyard or winery capital expense" may include a qualified small producer capital expense, defined pursuant to this section, as applicable to a small producer of alcoholic beverages.

"Qualified operating expense" means the normal, day-to-day operating expenditures made by an eligible small producer of alcoholic beverages, including payroll, rent, utilities, insurance, and marketing expenses and purchases of goods and services. "Qualified operating expense" shall not include any qualified small producer capital expense or qualified vineyard or winery capital expense.

"Small producer of alcoholic beverages" means a business that has been issued, pursuant to R.S.33:1-10, and is operating in compliance with, a limited brewery license, a restricted brewery license, a plenary winery license, a farm winery license, a cidery and meadery license, a limited distillery license, a supplementary limited distillery license, or a craft distillery license.

"Vineyard" means agricultural lands located in the State consisting of at least one contiguous acre dedicated to the growing of grapes or other fruit that are used or are intended to be used in the production of wine by a winery as well as any other plants or other improvements located thereon.

"Winery" means a commercial farm where the owner or operator of the commercial farm has been issued and is operating in compliance with a plenary winery license or farm winery license pursuant to R.S.33:1-10.

(cf: P.L.2019, c.34, s.1)

2. Section 2 of P.L.2019, c.34 (C.34:1B-267) is amended to read as follows:

2. a. The New Jersey Economic Development Authority, in consultation with the [Department of Agriculture] department and the division, shall maintain and administer a loan program and application process for the purpose of providing:

(1) loans to eligible vineyards or wineries and eligible small producers of alcoholic beverages to pay for qualified small producer capital expenses and qualified vineyard or winery capital expenses respectively; and

(2) loans to eligible small producers of alcoholic beverages to pay for qualified operating expenses during a pandemic having an interest rate equal to the prime rate or an amount up to three percentage points above the prime rate.

b. A loan to an eligible vineyard [or], winery, or small producer of alcoholic beverages authorized under P.L.2019, c.34 (C.34:1B-266 et seq.) shall be made pursuant to a loan agreement with the authority and shall contain any terms and conditions considered appropriate by the authority that are consistent with the purposes of P.L.2019, c.34 (C.34:1B-266 et seq.). The provisions of the loan agreement shall include, but not be limited to, a statement of the proportional shares of ownership in an eligible vineyard [or], winery, or small producer of alcoholic beverages, equipment usage and maintenance responsibilities, and loan repayment responsibilities for any loan proceeds received under the loan program.

c. The authority may, in its discretion, require an eligible vineyard [or], winery, or small producer of alcoholic beverages that receives a loan authorized pursuant to P.L.2019, c.34 (C.34:1B-266 et seq.) to submit an annual audited financial statement to the authority in order to ensure the continued viability of [all] the operations of the vineyard [or], winery [operations], or small producer of alcoholic beverages.

d. The authority may, either through the adoption of rules and regulations, or through the terms of the loan agreement made pursuant to subsection c. of this section, establish terms governing the incidence of default by an eligible vineyard **[**or**]**<u>,</u> winery<u>, or small producer of alcoholic beverages</u> that receives a loan under the program administered pursuant to P.L.2019, c.34 (C.34:1B-266 et seq.).

<u>e. The authority may discontinue providing loans, pursuant to paragraph (2) of subsection a. of this section, once the Governor has rescinded a declared public health emergency and state of emergency pertaining to a pandemic.</u>

(cf: P.L.2019, c.34, s.2)

3. Section 3 of P.L.2019, c.34 (C.34:1B-268) is amended to read as follows:

3. The authority, in consultation with the department <u>and the division</u>, may adopt 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.2019, c.34 (C.34:1B-266 et seq.).

(cf: P.L.2019, c.34, s.3)

4. This act shall take effect immediately.

STATEMENT

This bill expands an existing loan program administered by the New Jersey Economic Development Authority (EDA) to include loans to “small producers of alcoholic beverages” for “qualified operating expenses” during a “pandemic,” as those terms are defined in the bill. The bill allows the EDA to discontinue providing these loans once the Governor has rescinded a declared state of emergency and public health emergency pertaining to a pandemic and the EDA determines that small producers of alcoholic beverages are no longer applying for loans for this purpose, or if the EDA has determined that the economic disruptions of the pandemic have ceased and the Department of Health notifies the EDA that the pandemic has been brought under control. These loans may be issued at an interest rate equal to the prime rate or up to three percentage points above the prime rate.

The bill expands the non-emergency loan program to allow the EDA to provide, on a permanent basis, loans to small producers of alcoholic beverages to be used for “qualified small producer capital expenses,” as that term is defined in the bill, just as the current program permits loans to vineyards or wineries for qualified vineyard and winery capital expenses.