

City of Albany Industrial Development Agency

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Tracy Metzger, Chair
Susan Pedo, Vice Chair
Darius Shahinfar, Treasurer
Lee Eck, Secretary

Dominick Calsolaro
Robert Schofield

Sarah Reginelli, Chief Executive Officer
Mark Opalka, Chief Financial Officer
Marisa Franchini, Agency Counsel
A. Joseph Scott, Special Counsel

To: Tracy Metzger
Susan Pedo
Darius Shahinfar
Lee Eck

Dominick Calsolaro
Robert Schofield

CC: Sarah Reginelli
Marisa Franchini
Joe Scott
Mark Opalka

Tom Conoscenti
Andy Corcione
Virginia Rawlins
Tammie Fanfa

Date: June 5, 2020

IDA FINANCE COMMITTEE MEETING

A Finance Committee Meeting of the City of Albany Industrial Development Agency Board of Directors will be held on **Wednesday, June 10th, 2020 at 12:15 pm** and conducted telephonically pursuant to Executive Order No. 202.1 issued by the New York State Governor's Office.

AGENDA

Roll Call, Reading & Approval of the Minutes of the Finance Committee Meeting of May 13, 2020

Report of Chief Financial Officer

None

Unfinished Business

None

Other Business

- A. Agency Update

New Business

- A. Agency Insurance
 - i. Annual Review of Agency Insurance Policy
- B. New York State Legislation
 - i. Review of Proposed Legislation Authorizing IDAs to Issue Loans/Grants
- C. Capitalize Albany Corporation (Liberty Park Acquisition Assistance)
 - i. Liberty Park Update

Please note that any materials for this item will be included in a supplemental packet available on the CAIDA website.

Adjournment

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Tracy Metzger, *Chair*
Susan Pedo, *Vice Chair*
Darius Shahinfar, *Treasurer*
Lee Eck, *Secretary*
Dominick Calsolaro
Robert Schofield
Jahkeen Hoke

Sarah Reginelli, *Chief Executive Officer*
Mark Opalka, *Chief Financial Officer*
Marisa Franchini, *Agency Counsel*

IDA MINUTES OF FINANCE COMMITTEE MEETING

Wednesday, May 13, 2020

Attending: Darius Shahinfar, Tracy Metzger, Lee Eck, Jahkeen Hoke and Dominick Calsolaro

Also Present: Susan Pedo, Robert Schofield, Sarah Reginelli, Mark Opalka, Joe Scott, Amy Lavine, Ashley Mohl, Tammie Fanfa, Andy Corcione, Mike Bohne, Virginia Rawlins, Thomas Conoscenti and Chris Medve

Public Present: Jack Calareso

These minutes are of a meeting conducted telephonically pursuant to Executive Order No. 202.1 issued by New York State Governor Andrew M. Cuomo, which suspended provisions of Article 7 of the Public Officers Law requiring public in-person access to public meetings and authorizing board members to participate in said meetings by conference call or similar service. Each of the members and staff present participated by conference call.

Chair Darius Shahinfar called the Finance Committee meeting of the IDA to order at 12:19 p.m.

Roll Call, Reading and Approval of Minutes of the April 8, 2020 Finance Committee Meeting

A roll call of the Committee members present was held. Chair Darius Shahinfar reported that all Committee members were present. Since the minutes of the previous meeting had been distributed to Committee members in advance for review, Chair Darius Shahinfar made a proposal to dispense with the reading of the minutes. Dominick Calsolaro made a motion to amend the minutes to reflect that Robert Schofield is not a member of the finance committee. Chair Darius Shahinfar seconded the motion to accept the amendments. Chair Darius Shahinfar proposed to approve the amended minutes of the Finance Committee meeting of April 8, 2020. Lee Eck moved and Dominick Calsolaro seconded to accept the amended minutes. Jahkeen Hoke abstained from the vote. The motion passed with all other members voting aye, the amended minutes were accepted.

Report of Chief Financial Officer

No update from the Chief Financial Officer.

Unfinished Business

No unfinished business to report

Other Business

Agency Update

New York State- Legislation Affecting IDA's

Staff indicated that they have not received an update from the state regarding proposed IDA legislation.

Compliance Update

2019 Annual Compliance

Staff advised the Committee that staff has received the annual compliance inquiry related to the PARIS Report that was submitted. Staff will be working to answer any questions presented by the ABO and will be reporting back to the IDA Board.

Staff advised the committee that Agency Counsel is working through the reconveyance and termination of the Agency assistance associated with the DILEK project.

New Business

Capitalize Albany Corporation (Liberty Park Acquisition Assistance) – Minutes provided by Hodgson Russ

Capitalize Albany Corporation has submitted an application to CAIDA for the acquisition assistance of 11 underutilized parcels in the blighted Liberty Park area through eminent domain. The area in question consists of .88 acres of underutilized land. Sarah reiterated to the committee that staff will continue to recuse themselves from any evaluation of the application as well as any further deliberation and voting regarding the Liberty Park Acquisition Assistance. Staff recused themselves from the remainder of committee meeting.

Chair Shahinfar then recognized Agency Counsel, who repeated the comments offered by Sarah that the IDA staff would not acting as the staff of the Agency on the matter because the project applicant is Capitalize Albany Corporation. Agency Counsel reported that he expected that a presentation regarding the proposed project would be made by the project applicant at the upcoming full board meeting. Other than a report on the status of the matter, no formal action was taken by the members of the Committee at the meeting.

There being no further business, Chair Darius Shahinfar adjourned the meeting at 12:32 PM.

Respectfully submitted,

Lee Eck, Assistant Secretary

MEMORANDUM FROM



To: Clients and Friends of the Firm
Date: June 1, 2020
Subject: Assembly Bill 10294 – A/Senate Bill 8181-A/Establishes State Disaster Emergency Loan Fund

On May 27, 2020, legislation was adopted and sent to the Governor¹ authorizing IDAs to establish a “State Disaster Emergency Loan Program,” to make loans to small businesses or not-for-profit corporations, and to make grants supporting COVID-19 response actions.

Please note the following summary of the proposed legislation and list of issues to consider in connection with complying with the proposed legislation.

Summary of Legislation

Background	<p>Senate Bill 8181-A, which was substituted for Assembly Bill 10294-A (the “Proposed Legislation”) will amend Section 858 of the General Municipal Law (“GML”) by adding a new Section 859-c to the GML.</p> <p>The amendments to Section 858 of the GML will provide authorization for industrial development agencies (“IDAs”) to make certain grants and loans.</p> <p>The new Section 859-c will create a “State Disaster Emergency Loan Program”.</p> <p>As noted above, the Proposed Legislation has been passed by both the Assembly and the Senate, and has been forwarded to the Governor for his signature. The Proposed Legislation will <u>not</u> become law until the Governor takes action. Accordingly, the below summary is expressly subject to the condition that the Governor takes action to provide for the Proposed Legislation to become law.</p>
Loans	<p>The Proposed Legislation authorizes IDAs to make loans to small businesses or not-for-profit corporations subject to the requirements contained in the State Disaster Emergency Loan Program.</p>
Grants	<p>The Proposed Legislation also authorizes IDAs to provide grants to small businesses and not-for-profit corporations.</p>
Definitions	<p>“Eligible entity” means both small businesses and not-for-profit corporations that:</p> <ul style="list-style-type: none">• Are physically located in New York State; and• Were in operation prior to the State disaster emergency. <p>“Grace period” means the 60-day period after a State disaster emergency ends.</p> <p>“Small business” means a business with not more 50 employees.</p>

¹ Assembly Bill 10294-A was passed by the Assembly. A companion bill, Senate Bill 8181-A was passed by the Senate, also on May 27, 2020. The legislation has been delivered to the Governor’s office for signing.

	<p>“Small not-for-profit corporation” means a not-for-profit corporation formed pursuant to the not-for-profit corporation law with not more than 50 employees.</p> <p>“State disaster emergency” means the period in which Executive Order 202 of 2020, as amended, is in effect to address the outbreak of COVID-19.</p>
Requirements Regarding Grants	<p>Grants may be provided for the following:</p> <ul style="list-style-type: none"> • Acquiring personal protective equipment, or • Installing fixtures necessary to prevent the spread of COVID-19. <p>Grants may be provided during the period that Executive Order 202 of 2020, as amended, is in effect.</p> <p>IDAs may not provide a small business or not-for-profit corporation with more than \$10,000 in grants pursuant to the Proposed Legislation.</p> <p>In order to be eligible for a grant, a small business or a not-for-profit corporation must meet the following requirements:</p> <ul style="list-style-type: none"> • Was a financially viable entity prior to the State disaster emergency; • Conducts business in the area served by the IDA; and • Has been negatively affected by the State disaster emergency.
State Disaster Emergency Loan Program	<p>IDAs may administer a State Disaster Emergency Loan Program to provide loans from available revenues to “eligible entities”. IDAs may not create more than one State Disaster Emergency Loan Program.</p>
Requirements for Making a Loan	<p>IDAs may make a loan to an eligible entity upon application from such entity through the State Disaster Emergency Loan Program, provided the IDAs have determined that the applicant:</p> <ul style="list-style-type: none"> • Was a financially viable entity prior to the State disaster emergency; and • Conducts business in the area served by the IDA; and • Has been negatively affected by the State disaster emergency. <p>IDAs may consider the following before approving the application of an eligible entity for a loan under the State Disaster Emergency Loan Program:</p> <ul style="list-style-type: none"> • Creditworthiness of the applicant prior to the State disaster emergency • The level of negative impact of the State disaster emergency on the operations and finances of the applicant • Applicant’s proposed plan to use the funds received through the State Disaster Emergency Loan Program • Applicant’s ties to their community and the impact of their work in the area served by the IDA

	<ul style="list-style-type: none"> • Applicant’s assurance that efforts will be made to retain jobs during the State disaster emergency • Other potential sources of funding available to the applicant
Terms of Loan	<p>Prior to the administering of a State Disaster Emergency Loan Program, an IDA shall develop and adopt by resolution, the terms and conditions of such loans, provided that:</p> <ul style="list-style-type: none"> • The amount of any loan shall not exceed \$25,000 (and provided further that the total amount of all loans received by an eligible entity shall not exceed \$25,000); and • The loan agreement shall not (i) require repayment during the grace period, or (ii) charge interest on the principal amount; and • The loan agreement shall require that the eligible entity repay the loan in full not later than one year after the end of the grace period; and • The loan agreement shall not contain a fee or penalty for the prepayment or early payment of the loan.
Priority for Highly Distressed Areas	<p>IDAs shall give priority under the State Disaster Emergency Loan Program to applications from applicants servicing highly distressed areas (as defined in Section 854 of the GML).</p>
Only One Loan	<p>No applicant shall be permitted to receive more than one loan from more than one IDA.</p>
Coordination Among IDAs	<p>Any IDAs that serve within the same municipalities shall coordinate the distribution of loans in the State Disaster Emergency Loan Program.</p>
Credit Counseling	<p>IDAs shall offer credit counseling services or refer eligible entities to not-for-profit credit counselors.</p>
Recordkeeping	<p>Each IDA shall maintain records related to the State Disaster Emergency Loan Program, including a record of loans issued and of payments received, and include such information in the annual PARIS filing.</p> <p>Each IDA that establishes a State Disaster Emergency Loan Program shall submit a report on the State Disaster Emergency Loan Program including, but not limited to, the number and aggregate amount of loans given, loans fully repaid, any outstanding loans, defaults and bad debts, to the following within one year after the State disaster emergency ends: the Governor, the Speaker of the Assembly and the Temporary President of the Senate.</p>
Interest Deferral	<p>Any interest deferred or not charged relating to a loan issued under the State Disaster Emergency Loan Program shall be exempt from all state taxes that may be applicable to such interest amounts. IDAs shall disclose to eligible entity borrowers in loan documents that there may be federal tax consequences to the program loans.</p>
No New Applications After State Disaster Emergency Ends	<p>No new loan applications for loans under the State Disaster Emergency Loan Program shall be accepted after the State disaster emergency ends.</p>
Effective Date:	<p>The Proposed Legislation is effective immediately (once signed by the Governor) and shall expire and be deemed repealed on December 31, 2021.</p>

Please note the following list of preliminary issues we have identified that IDAs need to consider and discuss with counsel in connection with the compliance with the Proposed Legislation.

	Issue	Summary Discussion
1.	Administration of Program	Under other sections of the GML, IDAs have the power to enter into contracts and to hire consultants. It would appear, therefore, that IDAs could contract with outside parties for assistance in undertaking the loan and grant programs outlined in the Proposed Legislation. Our view, however, would be that the IDA should be involved in the actual approval of the loan and/or the grant and not delegate that task to an outside consultant.
2.	Available revenues	The Proposed Legislation provides that IDAs may administer a State Disaster Emergency Loan Program from “available revenues”. Available revenues are not defined in the Proposed Legislation, but it would appear to include moneys generated by IDAs through the collection of administration fees.
3.	Definition of Personal Property and Fixtures	We would suggest using the typical definitions contained in federal tax law.
4.	Acquiring and installing	Note that the Proposed Legislation describes “acquiring” personal property and “installing” fixtures. Can grant moneys be used to acquire fixtures?
5.	Number of employees	The Proposed Legislation is not clear on how the number of employees is determined. Namely, FTEs? Include part-time employees?
6.	Interest on Loan	Although there is some ambiguity in the Proposed Legislation, it appears that the loan cannot accrue interest.
7.	Coordination with Other IDAs	In municipalities where there are overlapping IDAs, there will be need for coordination among the IDAs.
8.	Loan Documents	There will be need for careful drafting to ensure compliance with the grace period and maturity date provisions contained in the Proposed Legislation.
9.	Claw-back Provisions	The Proposed Legislation does not restrict the ability of IDAs to impose additional requirements on the making of loans and grants, including the imposition of claw-back agreements.
10.	Existing Loans	Any grant or loan made by an IDA under the Proposed Legislation is subject to existing loans and covenants of the project applicants.
11.	Fees and Expenses	The Proposed Legislation does not prohibit IDAs from charging fees and expenses, including attorneys’ fees. If such fees are to be paid out of the proceeds of the loan or grant, then the amount of the loan or grant must be reduced to reflect the loan and grant limit contained in the Proposed Legislation.
12.	Recordkeeping	Given the amount of regulatory oversight IDAs are subject to, it is very important that IDAs maintain careful and complete records of its grants and loans.

If you have any comments or questions on the Proposed Legislation, please do not hesitate to contact the following attorneys:

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S 8181-A MAY Same as [A 10294-A](#) Stirpe
 ON FILE: 05/24/20 Public Authorities Law
 TITLE....Establishes a state disaster emergency loan
 program
 04/13/20 REFERRED TO CORPORATIONS,
 AUTHORITIES AND COMMISSIONS
 05/24/20 AMEND (T) AND RECOMMIT TO
 CORPORATIONS, AUTHORITIES AND
 COMMISSIONS
 05/24/20 PRINT NUMBER 8181A
 05/26/20 REPORTED AND COMMITTED TO
 RULES
 05/27/20 ORDERED TO THIRD READING
 CAL.646
 05/27/20 PASSED SENATE
 05/27/20 DELIVERED TO ASSEMBLY
 05/27/20 referred to ways and means
 05/27/20 substituted for a10294a
 05/27/20 ordered to third reading rules cal.32
 05/27/20 passed assembly
 05/27/20 returned to senate

A10294-A Stirpe Same as [S 8181-A](#) MAY
 General Municipal Law
 TITLE....Establishes a state disaster emergency loan
 program
 04/15/20 referred to corporations, authorities and
 commissions
 04/24/20 reference changed to local governments
 05/24/20 amend (t) and recommit to local
 governments
 05/24/20 print number 10294a
 05/26/20 reported referred to ways and means
 05/27/20 reported referred to rules
 05/27/20 reported
 05/27/20 rules report cal.32
 05/27/20 substituted by s8181a
S08181 MAY AMEND=A
 04/13/20 REFERRED TO CORPORATIONS,
 AUTHORITIES AND COMMISSIONS
 05/24/20 AMEND (T) AND RECOMMIT TO
 CORPORATIONS, AUTHORITIES AND
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 05/27/20 ordered to third reading rules cal.32
 05/27/20 passed assembly
 05/27/20 returned to senate

STATE OF NEW YORK

8181--A

IN SENATE

April 13, 2020

Introduced by Sens. MAY, BIAGGI -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law, in relation to establishing a state disaster emergency loan program; and providing for the repeal of such provisions upon the expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions 16 and 17 of section 858 of the general municipal law, as added by chapter 1030 of the laws of 1969 and as renumbered
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3 by chapter 356 of the laws of 1993, are amended to read as follows:

4 (16) To establish and re-establish its fiscal year; [~~and~~]

5 (17) To provide loans to small businesses or not-for-profit corporations as authorized in section eight hundred fifty-nine-c of this title; and

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7
8 (18) To provide grants to small businesses and not-for-profit corporations, as defined in section eight hundred fifty-nine-c of this title, for the purpose of acquiring personal protective equipment or installing fixtures necessary to prevent the spread of novel coronavirus, COVID-19, during the period in which executive order two hundred two of two thousand twenty, as amended, is in effect. In order to be eligible for a grant pursuant to this subdivision, a small business or not-for-profit corporation must meet the requirements of paragraph a of subdivision three of section eight hundred fifty-nine-c of this title. No industrial development agency may provide a small business or not-for-profit corporation with more than ten thousand dollars pursuant to this subdivision; and

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20 (19) To do all things necessary or convenient to carry out its purposes and exercise the powers expressly given in this title.

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22 § 2. The general municipal law is amended by adding a new section
23 859-c to read as follows:

24 § 859-c. State disaster emergency loan program. 1. For purposes of this section:
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EXPLANATION--Matter in italics (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

LBD16066-09-0

1 a. "grace period" means the sixty-day period after a state disaster
2 emergency ends;

3 b. "eligible entity" means both a small business and a small not-for-
4 profit corporation that:

5 (i) is physically located in the state; and

6 (ii) was operational prior to the state disaster emergency.

7 c. "small business" means a business with not more than fifty employ-
8 ees;

9 d. "small not-for-profit corporation" means a not-for-profit corpo-
10 ration, formed pursuant to the not-for-profit corporation law with not
11 more than fifty employees; and

12 e. "state disaster emergency" means the period in which executive
13 order two hundred two of two thousand twenty, as amended, is in effect
14 to address the outbreak of novel coronavirus, COVID-19.

15 2. Any industrial development agency (IDA) may administer a state
16 disaster emergency loan program to provide loans from available revenue
17 to eligible entities pursuant to this section, provided that no IDA may
18 create more than one state disaster emergency loan program.

19 3. a. An IDA may make a loan to an eligible entity upon application
20 from such entity through the state disaster emergency loan program,
21 provided the IDA has determined that the applicant:

22 (i) was a financially viable entity prior to the state disaster emer-
23 gency;

24 (ii) conducts business in the area served by the IDA; and

25 (iii) has been negatively affected by the state disaster emergency.

26 b. An IDA shall consider the following, before approving the applica-
27 tion of an eligible entity for a loan under the state disaster emergency
28 loan program:

29 (i) creditworthiness of the applicant prior to the state disaster
30 emergency;

31 (ii) the level of negative impact of the state disaster emergency on
32 the operations and finances of the applicant;

33 (iii) applicant's proposed plan to use the funds received through this
34 program;

35 (iv) applicant's ties to their community and the impact of their work
36 in the area served by the IDA;

37 (v) applicant's assurance that efforts will be made to retain jobs
38 during the state disaster emergency; and

39 (vi) other potential sources of funding available to the applicant.

40 c. An IDA shall give priority under the state disaster emergency loan
41 program to applications from applicants serving highly distressed areas
42 as defined pursuant to subdivision eighteen of section eight hundred
43 fifty-four of this title.

44 d. No applicant shall be permitted to receive loans from more than one
45 IDA.

46 e. Any IDAs that serve within the same municipalities shall coordinate
47 the distribution of loans in the state disaster emergency loan program.

48 4. Prior to administering a state disaster emergency loan program, an
49 IDA shall develop, and adopt by resolution, the terms and conditions of
50 such loans, provided that:

51 a. The amount of any loan provided pursuant to this section shall not
52 exceed twenty-five thousand dollars, provided that the total amount of
53 all loans received by an eligible entity shall not exceed twenty-five
54 thousand dollars;

55 b. The loan agreement shall not (i) require repayment during the grace
56 period, or (ii) charge interest on the principal amount;

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1 c. The loan agreement shall require that the eligible entity repay the
2 loan in full not later than one year after the end of the grace period;
3 and

4 d. The loan agreement shall not contain a fee or penalty for the
5 prepayment or early payment of the loan.

6 5. The IDA shall offer credit counseling services or refer eligible
7 entities to not-for-profit credit counselors.

8 6. a. Each IDA shall maintain records related to the state disaster
9 emergency loan program, including a record of loans issued and of
10 payments received, and include such information in the annual report
11 required by section twenty-eight hundred of the public authorities law.

12 b. An IDA that establishes a state disaster emergency loan program
13 pursuant to this section shall submit a report on the program including
14 but not limited to the number and aggregate amount of loans given, loans
15 fully repaid, any outstanding loans, defaults and bad debts, to the
16 governor, the speaker of the assembly, and the temporary president of
17 the senate one year after the state disaster emergency ends.

18 7. Any interest deferred or not charged related to a loan issued
19 pursuant to this section shall be exempt from all state taxes that may
20 be applicable to such interest amounts as they relate to an eligible
21 entity. IDAs shall disclose to eligible entity borrowers in loan docu-
22 ments that there may be federal tax consequences to the program loans.

23 8. No new loan applications pursuant to this section shall be accepted
24 after the state disaster emergency ends.

25 § 3. This act shall take effect immediately and shall expire and be
26 deemed repealed December 31, 2021.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S8181A

SPONSOR: MAY

TITLE OF BILL:

An act to amend the general municipal law, in relation to establishing a state disaster emergency loan program; and providing for the repeal of such provisions upon the expiration thereof

PURPOSE:

To provide industrial development agencies (IDAs) with the flexibility to support small businesses and non-profits during public health emergencies.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 of the bill provides for grants and in-kind donations from Industrial Development Agencies (IDAs) to small businesses or not-for-profits for the purposes of purchasing personal protective equipment (PPE) and other fixtures needed to help prevent the spread of COVID-19.

Section 2 establishes the State disaster emergency loan program to allow IDAs to make loans to small businesses and not-for-profit organizations up to \$25,000 with certain considerations. IDAs who choose to administer a State disaster emergency loan program will have to maintain records related to the program, and report to the Governor, Speaker of the Assembly and Temporary President of the Senate one year following the end of the State disaster emergency declaration.

Section 3 establishes the effective date, and the expiration of the legislation on December 31; 2021.

JUSTIFICATION:

The current public health crisis is forcing small businesses and not-for-profit organizations across New York to slow down or shut down operations. This represents a significant threat to the viability of these businesses, who are significant employers and important pieces of their communities. Current restrictions limit the ability of local IDAs to provide loans to such small businesses and not-for-profit organizations to help ensure their short-term viability, especially until the Small Business Administration's funding in response to the crisis comes online. Granting IDAs a short-term authority to extend such moderate loans will help ensure New York's small businesses and not-for-profit organizations remain viable after this public health crisis and have more options in any future crises. Also, providing grants for Personal Protective Equipment (PPE) and installation of safety fixtures for these small businesses and not-for-profit organizations will allow safety for workers during the COVID-19 pandemic.

PRIOR LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

To be determined.

EFFECTIVE DATE:

Immediately.