



STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

To: Rep. Marcotte, Chair of House Commerce
Sen. Sirotkin, Chair of Senate Economic Development

Date: 8 June 2020

Re: S.350

Cc: Rep. Toll, Chair of House Appropriations
Sen. Kitchel, Chair of Senate Appropriations

Having reviewed S.350, I offer the following observations and proposals for improved accountability, risk reduction, and cost-efficiency.

I understand your desire to inject the CARES Act funding into the community as soon as possible. However, some aspects of this bill raise concerns about risk that deserve your consideration.

In my view, creating the program and appropriating \$50 million before the Tax Department has established "*a formula for determining the amount of grant awards*" is a significant delegation of authority without any guidance (Sec. 2 (c)(1)).

Likewise, allowing the Department to "*consider whether and by how much grant awards should be adjusted based on whether an applicant has received financial assistance from other sources*" is both broad and, again, a significant delegation of authority without any guidance (Sec 2 (c)(2)).

I respectfully propose an alternative. Instead of enacting a bill with so little detail and accountability, you could assign responsibility to the Joint Fiscal Committee to approve the funding formulas, guidelines, and the method to adjust for financial assistance from other sources.¹ Without either more detail in the legislation or an accountability measure such as I've proposed, the Legislature and people of Vermont won't have the necessary assurances that the administration will identify and prioritize the most disadvantaged businesses and maximize the use of these public dollars.

Although it may be too late for this first tranche of money, I am concerned that the Governor's proposal has not yet been analyzed by the Joint Fiscal Office and/or the Legislature's economist. Everyone agrees on the need for assistance, but – unless I'm mistaken – no other approaches have been considered. It's not too late to do this for the other recovery bills that will come before you.

Regarding other particular aspects of the bill, I offer the following observations.

¹ There is precedent for this as the JFC has had the authority to approve the VEGI methodology for years.

Eligibility

Sec. 1 (2)(D)(ii) *“The business is closed for business due to the COVID-19 public health emergency but has a good-faith plan for reopening.”*

How are Tax and ACCD defining a “good faith plan”? Who will evaluate such plans and with what criteria? It would be prudent to establish criteria based on evidence of tangible actions taken by applicants to reopen.

In addition, there is no mention in the bill of the State’s authority and ability to recover or claw back funds later found to be utilized for ineligible purposes. Arguably, this should be made clear up front so that applicants are aware of the risks.

Sec. 1 (3) *“Eligible use” means a use of grant funds permitted under the CARES Act to assist a business in addressing the costs of business interruption due to the COVID-19 public health emergency.”*

This is an exceptionally broad definition and is in flux as the federal government continues to update and clarify the relevant guidance. Absent more specificity, early grantees may well run afoul of authorized uses and result in efforts by the federal government to recover CARES Act funds from state government. It would be advisable to require the administration to develop some guidance and update it as needed.

Sec. 2 (b)(3) *“An eligible business may apply for a grant for an eligible use if the business experienced a 75 percent or greater reduction in taxable sales in any one-month period from March 1, 2020 to September 1, 2020 as compared to the same one-month period”* in the previous year.

There are several concerns here.

- If a business sells taxable and non-taxable goods (e.g., supermarket or big box store), a reduction in sales of taxable goods may not present a complete picture of the business’s actual condition, especially if there has been a shift in sales from taxable to non-taxable goods. Basing this award on total receipts (taxable and non-taxable) could be a more effective way to help Vermont businesses than basing the award solely on taxable sales.
- The embedded assumption is that businesses experiencing a one-month taxable sales decline of this magnitude are in need of this money. But it ignores the possibility that some may have rebounded a bit and/or have access to other resources, such as insurance, the SBA’s PPP, savings, etc. This money won’t help businesses in December if demand for their products has dried up, and so this money should be used to provide for their immediate and hopefully transient needs.
- One month could be an anomaly.
- At present, eligibility is limited to businesses that collect and remit state taxes. Generally speaking, this excludes many service sector businesses that might have been heavily impacted by the COVID-19 shutdowns.

Sec. 1 (2)(c) requires that “*The business was in operation on or before February 15, 2020.*”

Providing grants to businesses that have only operated for a brief period prior to shutdowns related to COVID-19 entails considerable risk because a high percentage of new businesses struggle and fail. It might be advisable to require evidence that businesses have met payroll for at least six months prior to the pandemic.

In addition, it is reasonable for the State to determine the financial health of applicants. For example, it would not make sense for the State to provide grants to businesses that are in bankruptcy or are in default on company debt.

Sec. 3 (a)(2) “*The Agency shall identify local, regional, and State economic development organizations with whom it may partner to most efficiently distribute grants under the Program, which may include the Vermont Economic Development Authority, regional development corporations, community action agencies, and private institutions.*”

ACCD is given authority to “identify” partners to “efficiently distribute” \$20 million with no criteria whatsoever. Not only are there no specific qualifications for such partners, there is no mention of accountability for the grant process.

You could require that partners certify they have adequate systems to track grant information and sufficient internal controls to ensure reliability of recorded data. In addition, you could require ACCD to review the partners’ eligibility justifications after two weeks and six weeks of commencement of grant distributions and report to the legislature.

The rest of Sec. 3 mirrors Sec. 2 and gives ACCD enormous latitude in disbursing funds. Here, too, I think it would provide Vermonters with greater accountability if you authorized the Joint Fiscal Committee to review and approve the Agency’s rules and procedures.