



# HOUSE BILL 1034: Small Business Emergency Loans.

2019-2020 General Assembly

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<b>Committee:</b>	House Rules, Calendar, and Operations of the House	<b>Date:</b>	April 29, 2020
<b>Introduced by:</b>	Reps. Ross, B. Jones, Wray	<b>Prepared by:</b>	Dan Ettefagh
<b>Analysis of:</b>	Second Edition		Staff Attorney

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**OVERVIEW:** *House Bill 1034 would appropriate \$75M to the Golden Leaf Foundation (GLF) for entities to provide emergency loan funding for small businesses adversely affected by the COVID-19 epidemic. The bill, in large part, mimics the existing bridge loan program GLF has been providing with non-State funds.*

**BILL ANALYSIS:** Section 1 of the bill makes funds available to GLF for entities for the purpose of providing emergency loans for businesses suffering economic loss resulting from the COVID-19 epidemic, prioritized to business establishments of 100 or fewer employees (measured at the time of the declaration of the State of Emergency). The program has the following notable elements, found in Section 1, unless otherwise noted:

- For the first 6 months after loan closing, the loans would have no payments due and an interest rate of up to 4%. Thereafter, repayment would commence and the interest rate would increase to not less than 5.5% for the rest of the loan term, which is capped at a total of 66 months and capped in amount at \$50k per recipient.
- Recipients would have to certify loaned funds were used on behalf of a business in NC and would be required to repay the loan, to the extent federal funds represent a duplication of benefits, upon receipt of federal funds, provided that doing so would not negatively impair federal funding benefits (such as federal fund repayment forgiveness) or eligibility.
- Repaid loan amounts would remain eligible for new loans to qualifying businesses until six months following the date the state of emergency ends.
- Pursuant to Section 3, and based on GLF having already used approximately \$15M in non-State funds in an existing emergency/bridge loan program, there is a \$15M required match for the \$75M appropriation in Section 4 of the bill. No new matching funds from GLF other than what has already been provided would be required.
- Section 3 requires that the amount appropriated in the act for bridge loans be returned to the source from which they were drawn minus (i) the cost of administering all loans made under the program, capped at 5% and (ii) any amount of State funds loaned and lost as a result of, e.g., default. Interest on the loans, as in past disaster relief loan programs, would be retained by the lender to offset the costs of originating and servicing the loans.
- Under Section 5 of the bill, GLF would report semi-annually on the program, including recipient NAICS codes, jobs retained, number and total amount of loans made, repaid, defaulted on, and recaptured, and the average loan amount.

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# House Bill 1034

Page 2

**EFFECTIVE DATE:** The bill is effective when it becomes law.

**BACKGROUND:** In periods of past disaster, GLF has provided low-interest emergency bridge loans, and the State has provided subsequent funding for longer-term small business loans with rates generally less favorable than federal SBA loan rates and, in some instances, commercially available credit. The bill would provide direct funding for the initial emergency, low-interest loans. An argument could be made against the provision of such loans with State funds on the grounds that (i) it violates the Constitutional prohibition against State and local governments making gifts to private entities (*see* NC Const. Art. I, Sec. 32) and (ii) it impermissibly places the State in competition with private industry for loaned funds (*see, e.g., Mitchell v. North Carolina Ind. Dev. Fin. Auth.*, 273 N.C. 137, 156 (1968) (stating that “it is not the function of government to engage in private business”)). In a 1999 opinion seeking analysis of the constitutionality of measures for providing relief in response to Hurricane Floyd, the Attorney General's office opined, in relevant part, that a court would likely hold that disaster relief programs which encompass low-interest loans to small businesses would serve a public purpose so long as the legislation is reasonably tailored to address the emergency situation existing in the disaster area and to assure that private interests do not predominate the public purpose. As an example, the opinion noted that such loans should be limited to persons within the disaster zone whose business suffered substantial damage as a consequence of the disaster and who have not otherwise been fully compensated for that damage. The last requirement, it could be argued, would need to occur after considering other forms of relief received by a business. Alternatively, given the processing time for federal funds and the pressing need for dollars in the interim that the requirement does not allow for a post-disaster analysis timeline.

The bill responds to the requirement for narrow tailoring by (1) requiring participating lenders to direct applicants to available federal assistance (or direct them to entities who can help with such assistance), (2) limiting the use of aid to businesses located within NC, (3) limiting the use of aid to businesses able to show economic loss as a result of the COVID-19 epidemic, (4) requiring repayment first of State-funded bridge loans with federal dollars received, provided it is a duplication of benefits and does not negatively impact eligibility for current or anticipated federal funds, (5) limiting the term of the loan and increasing the applicable interest rate after the initial six-month period, (6) returning State bridge loan funds, other than amounts provided for loan origination and servicing back to the General Fund, and (7) requiring non-State funds as a match.

One other issue of note is that the guidance provided by the federal government indicates that if a State has not used the funds it has received to cover costs that were incurred by Dec 30, 2020, as required by statute, those funds must be returned to the Dept of Treasury. Further clarification on the federal guidance is needed and expected; however, until provided, an argument could be made that funds loaned out under the program have not been used in a way that satisfies the federal requirement. If the argument is sustained, the \$75M used for the program would have to be returned to the federal government.