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H.B. No. 3271

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to establishing loan programs to assist certain  
3 micro-businesses by increasing access to capital; authorizing  
4 fees.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 481, Government Code, is amended by  
7 adding Subchapters CC and EE to read as follows:

8 SUBCHAPTER CC. MICRO-BUSINESS DISASTER RECOVERY PROGRAM

9 Sec. 481.451. DEFINITIONS. In this subchapter:

10 (1) "Community development financial institution" has  
11 the meaning assigned by 12 U.S.C. Section 4702.

12 (2) "Declared disaster" has the meaning assigned by  
13 Section 481.551.

14 (3) "Default rate" means the percentage of  
15 micro-business disaster recovery loans made that did not meet the  
16 payment terms during a period specified by the bank.

17 (4) "Fund" means the micro-business recovery fund  
18 established under Section 481.452.

19 (5) "Micro-business" means a corporation,  
20 partnership, sole proprietorship, or other legal entity that:

21 (A) is domiciled in this state and has at least 95  
22 percent of its employees located in this state;

23 (B) is formed to make a profit; and

24 (C) employs not more than 20 employees.

1           (6) "Micro-business disaster recovery loan" or  
2 "disaster recovery loan" means a loan made by a participating  
3 community development financial institution to micro-businesses  
4 under the program.

5           (7) "Program" means the micro-business disaster  
6 recovery loan program established under this subchapter.

7           Sec. 481.452. MICRO-BUSINESS RECOVERY FUND. (a) The  
8 micro-business recovery fund is a dedicated account in the general  
9 revenue fund.

10           (b) Appropriations for the implementation and  
11 administration of this subchapter and Subchapter EE and any other  
12 amounts received by the bank or state under this subchapter or  
13 Subchapter EE shall be deposited in the fund.

14           (c) Money in the fund may be appropriated only to the bank  
15 for use in carrying out the purposes of this subchapter and  
16 Subchapter EE.

17           (d) The financial transactions of the fund are subject to  
18 audit by the state auditor as provided by Chapter 321.

19           Sec. 481.453. POWERS OF BANK IN ADMINISTERING  
20 MICRO-BUSINESS RECOVERY FUND. In administering the fund, the bank  
21 has the powers necessary to carry out the purposes of this  
22 subchapter and Subchapter EE, including the power to:

23           (1) make, execute, and deliver contracts,  
24 conveyances, and other instruments necessary to the exercise of its  
25 powers;

26           (2) invest money at the bank's discretion in  
27 obligations determined proper by the bank, and select and use

1 depositories for its money;

2 (3) employ personnel and counsel and pay those persons  
3 from money in the fund legally available for that purpose; and

4 (4) impose and collect fees and charges in connection  
5 with any transaction and provide for reasonable penalties for  
6 delinquent payment of fees or charges.

7 Sec. 481.454. ESTABLISHMENT OF LOAN PROGRAM; PURPOSE. (a)  
8 The bank shall establish and administer a revolving loan program as  
9 provided by this subchapter.

10 (b) The program shall expand access to capital for  
11 qualifying micro-businesses to create jobs in this state.

12 Sec. 481.455. PROGRAM ADMINISTRATION. (a) The bank, under  
13 the program, shall provide zero interest loans to eligible  
14 community development financial institutions for purposes of  
15 making interest-bearing loans to qualifying micro-businesses that  
16 have difficulty in accessing capital following a declared disaster.

17 (b) A loan made by an eligible community development  
18 financial institution under the program:

19 (1) must be made to a micro-business that:

20 (A) is in good standing under the laws of this  
21 state; and

22 (B) did not owe delinquent taxes to a taxing unit  
23 of this state before the date of the initial issuance of the  
24 disaster declaration;

25 (2) may not be made to a micro-business that:

26 (A) has total revenue that exceeds the amount for  
27 which no franchise tax is due under Section 171.002(d)(2), Tax

1 Code;

2 (B) is a franchise;

3 (C) is a national chain with operations in this  
4 state;

5 (D) is a lobbying firm; or

6 (E) is a private equity firm or backed by a  
7 private equity firm; and

8 (3) must meet any other criteria provided by this  
9 subchapter.

10 (c) Payments on micro-business disaster recovery loans  
11 shall be made directly to the lending community development  
12 financial institutions. The financial institutions shall use the  
13 loan payment money received from borrowers to make new loans as  
14 provided by this subchapter.

15 (c-1) In awarding loans under the program, a community  
16 development financial institution participating in the program  
17 shall give preference to applicant micro-businesses that did not  
18 receive a loan or grant under the Coronavirus Aid, Relief, and  
19 Economic Security Act (15 U.S.C. Section 9001 et seq.), as amended  
20 by the Paycheck Protection Program Flexibility Act of 2020 (Pub. L.  
21 No. 116-142) and the Consolidated Appropriations Act, 2021 (Pub. L.  
22 No. 116-260).

23 (d) All income received on a loan made by a community  
24 development financial institution participating in the program is  
25 the property of the financial institution. Income received on a  
26 loan includes the payment of interest by a borrower micro-business  
27 and the administrative fees assessed by the community development

1 financial institution.

2 (e) A community development financial institution  
3 participating in the program shall repay the bank the zero interest  
4 loans borrowed by the financial institution under the program  
5 quarterly, and the bank or this state is not responsible or liable  
6 for any defaults in micro-business disaster recovery loans made by  
7 the community financial institution.

8 Sec. 481.456. RULEMAKING. The executive director shall  
9 adopt rules relating to the implementation of the program,  
10 including:

11 (1) rules establishing eligibility criteria for  
12 community development financial institutions that want to  
13 participate in the program; and

14 (2) any other rules necessary to accomplish the  
15 purposes of this subchapter.

16 Sec. 481.457. OVERSIGHT. (a) A community development  
17 financial institution participating in the program shall report  
18 quarterly to the bank:

19 (1) the names of micro-businesses that have received a  
20 disaster recovery loan;

21 (2) the current balance of all outstanding disaster  
22 recovery loans;

23 (3) the default rate on existing disaster recovery  
24 loans; and

25 (4) any other information the bank requires.

26 (b) A community development financial institution  
27 participating in the program shall prepare a detailed financial

1 statement each quarter.

2 (c) A community development financial institution shall  
3 allow the bank to inspect the institution's financial records on  
4 request.

5 Sec. 481.458. PROGRAM ANNUAL STATUS REPORT. The bank shall  
6 issue an annual status report on the program. The bank shall  
7 deliver its report to the governor, the lieutenant governor, the  
8 speaker of the house of representatives, and the standing  
9 committees of the legislature with primary jurisdiction over  
10 micro-businesses and economic development.

11 SUBCHAPTER EE. MICRO-BUSINESS ACCESS TO CAPITAL PROGRAM

12 Sec. 481.551. DEFINITIONS. In this subchapter:

13 (1) "Community development financial institution" has  
14 the meaning assigned by 12 U.S.C. Section 4702.

15 (2) "Declared disaster" means:

16 (A) a declaration of a state of disaster under  
17 Section 418.014 or 418.108; or

18 (B) a disaster declared by the president of the  
19 United States, if any part of this state is named in the federally  
20 designated disaster area.

21 (3) "Fund" means the micro-business recovery fund  
22 established under Section 481.452.

23 (4) "Micro-business" has the meaning assigned by  
24 Section 481.451.

25 (5) "Micro-business access to capital loan" means a  
26 loan that is entitled to be secured by the fund as provided by this  
27 subchapter.

1           (6) "Participating financial institution" means a  
2 community development financial institution participating in the  
3 program.

4           (7) "Program" means the micro-business access to  
5 capital program established under this subchapter.

6           (8) "Reserve account" means an account established in  
7 a participating financial institution on approval of the bank in  
8 which money is deposited to serve as a source of additional revenue  
9 to reimburse the financial institution for losses on loans enrolled  
10 in the program.

11           Sec. 481.552. MICRO-BUSINESS ACCESS TO CAPITAL PROGRAM.

12           (a) The bank shall establish a micro-business access to capital  
13 program to assist a participating financial institution in making  
14 loans to micro-businesses that have suffered economic injury as a  
15 result of a declared disaster and that face barriers in accessing  
16 capital.

17           (b) The bank shall use money in the fund to make a deposit in  
18 a participating financial institution's reserve account in an  
19 amount specified by this subchapter to be a source of money the  
20 institution may receive as reimbursement for losses attributable to  
21 loans in the program.

22           (c) To participate in the program, a financial institution  
23 must be an eligible community development financial institution.  
24 The bank shall determine the eligibility of a community development  
25 financial institution to participate in the program and may set a  
26 limit on the number of eligible community development financial  
27 institutions that may participate in the program.

1        (d) To participate in the program, an eligible community  
2 development financial institution must enter into a participation  
3 agreement with the bank that sets out the terms and conditions under  
4 which the bank will make contributions to the institution's reserve  
5 account and specifies the criteria for a loan to qualify as a  
6 micro-business access to capital loan, including criteria that  
7 ensures that a micro-business access to capital loan is not unfair  
8 or abusive to the borrower.

9        (e) To qualify as a micro-business access to capital loan, a  
10 loan:

11            (1) must be made to a micro-business that:

12                    (A) is in good standing under the laws of this  
13 state; and

14                    (B) did not owe delinquent taxes to a taxing unit  
15 of this state before the date of the initial issuance of the  
16 disaster declaration;

17            (2) may not be made to a micro-business that:

18                    (A) has total revenue that exceeds the amount for  
19 which no franchise tax is due under Section 171.002(d)(2), Tax  
20 Code;

21                    (B) is a franchise;

22                    (C) is a national chain with operations in this  
23 state;

24                    (D) is a lobbying firm; or

25                    (E) is a private equity firm or backed by a  
26 private equity firm; and

27            (3) must meet any other criteria provided by this



1 subchapter.

2 (f) In awarding micro-business access to capital loans  
3 under the program, a participating financial institution shall give  
4 preference to applicant micro-businesses that did not receive a  
5 loan or grant under the Coronavirus Aid, Relief, and Economic  
6 Security Act (15 U.S.C. Section 9001 et seq.), as amended by the  
7 Paycheck Protection Program Flexibility Act of 2020 (Pub. L.  
8 No. 116-142) and the Consolidated Appropriations Act, 2021 (Pub. L.  
9 No. 116-260).

10 Sec. 481.553. RULEMAKING AUTHORITY. The executive director  
11 shall adopt rules relating to the implementation of the program and  
12 any other rules necessary to accomplish the purposes of this  
13 subchapter.

14 Sec. 481.554. PROVISIONS RELATING TO MICRO-BUSINESS ACCESS  
15 TO CAPITAL LOAN. (a) Except as otherwise provided by this  
16 subchapter, the bank may not determine the recipient, amount, or  
17 interest rate of a micro-business access to capital loan or the fees  
18 or other requirements related to the loan.

19 (b) A loan is not eligible to be enrolled under this  
20 subchapter if the loan is for:

- 21 (1) construction or purchase of residential housing;  
22 (2) simple real estate investments, excluding the  
23 development or improvement of commercial real estate occupied by  
24 the borrower's business; or  
25 (3) inside bank transactions.

26 (c) The borrower of a micro-business access to capital loan  
27 shall apply the loan to working capital or to the purchase,

1 construction, or lease of capital assets, including buildings and  
2 equipment used by the business. Working capital uses include the  
3 cost of exporting, accounts receivable, payroll, inventory, and  
4 other financing needs of the business.

5 (d) A micro-business access to capital loan may be sold on  
6 the secondary market with no recourse to the bank or to the loan  
7 loss reserve correspondent to the loan and under conditions as may  
8 be determined by the bank.

9 (e) When enrolling a loan in the program, a participating  
10 community development financial institution may specify an amount  
11 to be covered under the program that is less than the total amount  
12 of the loan.

13 Sec. 481.555. RESERVE ACCOUNT. (a) On approval by the bank  
14 and after entering into a participation agreement with the bank, a  
15 participating community development financial institution making a  
16 micro-business access to capital loan shall establish a reserve  
17 account. The reserve account shall be used by the institution only  
18 to cover any losses arising from a default of a micro-business  
19 access to capital loan made by the institution under this  
20 subchapter or as otherwise provided by this subchapter.

21 (b) A participating community development financial  
22 institution that makes a loan enrolled in the program shall require  
23 the borrower to pay to the institution a fee in an amount that is not  
24 less than two percent but not more than three percent of the  
25 principal amount of the loan, which the financial institution shall  
26 deposit in the reserve account. The institution shall also deposit  
27 in the reserve account an amount equal to the amount of the fee

1 received by the institution from the borrower under this  
2 subsection. The institution may recover from the borrower all or  
3 part of the amount the institution is required to pay under this  
4 subsection in any manner agreed to by the institution and borrower.

5 (c) For each micro-business access to capital loan made by a  
6 community development financial institution, the institution shall  
7 certify to the bank, within the period prescribed by the bank, that  
8 the institution has made a micro-business access to capital loan  
9 and the amount the institution has deposited in the reserve  
10 account, including the amount of fees received from the borrower.

11 (d) On receipt of a certification made under Subsection (c)  
12 and subject to Section 481.556, the bank shall deposit in the  
13 institution's reserve account for each micro-business access to  
14 capital loan made by the institution an amount equal to 200 percent  
15 of the total amount deposited under Subsection (b) for each loan.

16 (e) A participating community development financial  
17 institution must obtain approval from the bank to withdraw funds  
18 from the reserve account.

19 Sec. 481.556. LIMITATIONS ON STATE CONTRIBUTION TO RESERVE  
20 ACCOUNT. (a) The amount deposited by the bank into a participating  
21 community development financial institution's reserve account for  
22 any single loan recipient may not exceed \$150,000 during a  
23 three-year period.

24 (b) The maximum amount the bank may deposit into a reserve  
25 account for each micro-business access to capital loan made under  
26 this subchapter is the lesser of \$35,000 or an amount equal to eight  
27 percent of the loan amount.

1       Sec. 481.557. RIGHTS OF STATE WITH RESPECT TO RESERVE  
2 ACCOUNT. (a) All of the money in a reserve account established  
3 under this subchapter is property of the state.

4       (b) The state is entitled to earn interest on the amount of  
5 contributions made by the bank, borrower, and institution to a  
6 reserve account under this subchapter. The bank shall withdraw  
7 monthly or quarterly from a reserve account the amount of the  
8 interest earned by the state. The bank shall deposit the amount  
9 withdrawn under this subsection into the fund.

10       (c) If the amount in a reserve account exceeds an amount  
11 equal to 33 percent of the balance of the community development  
12 financial institution's outstanding micro-business access to  
13 capital loans, the bank may withdraw the excess amount and deposit  
14 the amount in the fund. A withdrawal of money authorized under this  
15 subsection may not reduce an active reserve account to an amount  
16 that is less than \$200,000.

17       (d) The bank shall withdraw from the institution's reserve  
18 account the total amount in the account and any interest earned on  
19 the account and deposit the amount in the fund when:

20               (1) a community development financial institution is  
21 no longer eligible to participate in the program or a participation  
22 agreement entered into under this subchapter expires without  
23 renewal by the bank or institution;

24               (2) the community development financial institution  
25 has no outstanding micro-business access to capital loans;

26               (3) the community development financial institution  
27 has not made a micro-business access to capital loan within the

1 preceding 24 months; or

2 (4) the community development financial institution  
3 fails to submit a report or other document requested by the bank  
4 within the time or in the manner prescribed.

5 Sec. 481.558. ANNUAL REPORT. A participating community  
6 development financial institution shall submit an annual report to  
7 the bank. The report must:

8 (1) provide information regarding outstanding  
9 micro-business access to capital loans, micro-business access to  
10 capital loan losses, and any other information on micro-business  
11 access to capital loans that the bank considers appropriate;

12 (2) state the total amount of loans for which the bank  
13 has made a contribution from the fund under this subchapter;

14 (3) include a copy of the institution's most recent  
15 financial statement; and

16 (4) include information regarding the type of  
17 micro-businesses with loans under this subchapter.

18 Sec. 481.559. STATUS REPORT. The office shall submit to the  
19 legislature an annual status report on the program's activities.

20 Sec. 481.560. STATE LIABILITY PROHIBITED. The state is not  
21 liable to a participating financial institution for payment of the  
22 principal, the interest, or any late charges on a micro-business  
23 access to capital loan made under this subchapter.

24 SECTION 2. This Act takes effect immediately if it receives  
25 a vote of two-thirds of all the members elected to each house, as  
26 provided by Section 39, Article III, Texas Constitution. If this  
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2021.