

AN ACT

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

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

SECTION 1. Chapter 481, Government Code, is amended by adding Subchapter CC to read as follows:

SUBCHAPTER CC. MICRO-BUSINESS DISASTER RECOVERY PROGRAM

Sec. 481.451. DEFINITIONS. In this subchapter:

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

(2) "Declared disaster" means:

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

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

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

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

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

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

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

4 (C) employs not more than 20 employees.

5 (6) "Micro-business disaster recovery loan" or
6 "disaster recovery loan" means a loan made by a participating
7 community development financial institution to micro-businesses
8 under the program.

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

11 Sec. 481.452. MICRO-BUSINESS RECOVERY FUND. (a) The
12 micro-business recovery fund is a dedicated account in the general
13 revenue fund.

14 (b) Appropriations for the implementation and
15 administration of this subchapter and any other amounts, including
16 federal allocations, received by the bank or state under this
17 subchapter shall be deposited in the fund.

18 (c) Money in the fund may be appropriated only to the bank
19 for use in carrying out the purposes of this subchapter.

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

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

27 (2) invest money at the bank's discretion in

1 obligations determined proper by the bank, and select and use
2 depositories for its money;

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

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

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

11 (b) The program shall expand access to capital for
12 qualifying micro-businesses to create jobs in this state and
13 constitutes a capital access program under Subchapter BB.

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

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

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

22 (A) is in good standing under the laws of this
23 state; and

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

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

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

4 (B) is a franchise;

5 (C) is a national chain with operations in this
6 state;

7 (D) is a lobbying firm; or

8 (E) is a private equity firm or backed by a
9 private equity firm; and

10 (3) must meet any other criteria provided by this
11 subchapter.

12 (c) Payments on micro-business disaster recovery loans
13 shall be made directly to the lending community development
14 financial institutions.

15 (d) All income received on a loan made by a community
16 development financial institution participating in the program is
17 the property of the financial institution. Income received on a
18 loan includes the payment of interest by a borrower micro-business
19 and the administrative fees assessed by the community development
20 financial institution.

21 (e) A community development financial institution
22 participating in the program shall make payments to the bank on the
23 zero interest loans borrowed by the financial institution under the
24 program quarterly, and the bank or this state is not responsible or
25 liable for any defaults in micro-business disaster recovery loans
26 made by the community development financial institution.

27 Sec. 481.456. RULEMAKING. The executive director shall

1 adopt rules relating to the implementation of the program and any
2 other rules necessary to accomplish the purposes of this
3 subchapter, including rules that provide criteria under which
4 community development financial institutions may qualify for the
5 program.

6 Sec. 481.457. OVERSIGHT. (a) A community development
7 financial institution participating in the program shall report
8 quarterly to the bank:

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

11 (2) the current balance of all outstanding disaster
12 recovery loans;

13 (3) the default rate on existing disaster recovery
14 loans; and

15 (4) any other information the bank requires.

16 (b) A community development financial institution
17 participating in the program shall prepare a detailed financial
18 statement each quarter and provide a copy to the bank.

19 (c) A community development financial institution shall
20 allow the bank to inspect the institution's financial records on
21 request for purposes that relate to loans under the program.

22 Sec. 481.458. PROGRAM ANNUAL STATUS REPORT. The bank shall
23 prepare an annual status report on the program. The office shall
24 include a summary of the report in the report to the legislature
25 required by Section 489.107.

26 SECTION 2. The heading to Subchapter BB, Chapter 481,
27 Government Code, is amended to read as follows:

1 SUBCHAPTER BB. ACCESS TO CAPITAL PROGRAMS [~~ACCESS PROGRAM~~]

2 SECTION 3. Section 481.401, Government Code, is amended by
3 amending Subdivisions (3), (7), (8), and (9) and adding Subdivision
4 (6-a) to read as follows:

5 (3) "Fund" means the original capital access fund.

6 (6-a) "Original capital access program" means the
7 program established under Section 481.405.

8 (7) "Participating financial institution" means a
9 financial institution participating in a [the] program.

10 (8) "Program" means an [the capital] access to capital
11 program established by the bank under this subchapter.

12 (9) "Reserve account" means an account established in
13 a participating financial institution on approval of the bank in
14 which money is deposited to serve as a source of additional revenue
15 to reimburse the financial institution for losses on loans enrolled
16 in a [the] program.

17 SECTION 4. Section 481.402, Government Code, is amended to
18 read as follows:

19 Sec. 481.402. ORIGINAL CAPITAL ACCESS FUND. (a) The
20 original capital access fund is a dedicated account in the general
21 revenue fund.

22 (b) Appropriations for the implementation and
23 administration of the original capital access program [~~this~~
24 ~~subchapter~~] and any other amounts received by the state for the
25 original capital access program [~~under this subchapter~~] shall be
26 deposited in the fund.

27 (c) Money in the fund may be appropriated only to the bank

1 for use in carrying out the purposes of the original capital access
2 program [~~this subchapter~~].

3 SECTION 5. Subchapter BB, Chapter 481, Government Code, is
4 amended by adding Section 481.403 to read as follows:

5 Sec. 481.403. ACCESS TO CAPITAL PROGRAMS. The bank may
6 establish access to capital loan-related programs of the following
7 types to promote private access to capital to certain businesses
8 with fewer than 500 full-time employees:

- 9 (1) capital access programs;
10 (2) collateral support programs;
11 (3) loan guarantee programs; and
12 (4) loan participation programs.

13 SECTION 6. The heading to Section 481.404, Government Code,
14 is amended to read as follows:

15 Sec. 481.404. POWERS OF BANK IN ADMINISTERING ORIGINAL
16 CAPITAL ACCESS FUND.

17 SECTION 7. Section 481.405, Government Code, is amended to
18 read as follows:

19 Sec. 481.405. ORIGINAL CAPITAL ACCESS PROGRAM. (a) The
20 original [bank shall establish a] capital access program has been
21 established by the bank to assist a participating financial
22 institution in making loans to businesses and nonprofit
23 organizations that face barriers in accessing capital.

24 (b) The bank shall use money in the fund to make a deposit in
25 a participating financial institution's reserve account in an
26 amount specified by this subchapter to be a source of money the
27 institution may receive as reimbursement for losses attributable to

1 loans in the original capital access program.

2 (c) The bank shall determine the eligibility of a financial
3 institution to participate in the original capital access program
4 and may set a limit on the number of eligible financial institutions
5 that may participate in the original capital access program.

6 (d) To participate in the original capital access program,
7 an eligible financial institution must enter into a participation
8 agreement with the bank that sets out the terms and conditions under
9 which the bank will make contributions to the institution's reserve
10 account and specifies the criteria for a loan to qualify as a
11 capital access loan under the original capital access program.

12 (e) To qualify as a capital access loan under the original
13 capital access program, a loan must:

14 (1) be made to a small or medium-sized business or to a
15 nonprofit organization;

16 (2) be used by the business or nonprofit organization
17 for any project, activity, or enterprise in this state that fosters
18 economic development; and

19 (3) meet any other criteria provided by this
20 subchapter.

21 SECTION 8. Section 481.406, Government Code, is amended to
22 read as follows:

23 Sec. 481.406. RULEMAKING AUTHORITY. (a) The executive
24 director may [~~shall~~] adopt rules relating to the implementation of
25 any [~~the~~] program established under this subchapter and any other
26 rules necessary to accomplish the purposes of this subchapter.

27 (b) The rules for the original capital access program may:

1 (1) provide for criteria under which a certain line of
2 credit issued by an eligible financial institution to a small or
3 medium-sized business or nonprofit organization qualifies to
4 participate in the original capital access program; and

5 (2) authorize a consortium of financial institutions
6 to participate in the original capital access program subject to
7 common underwriting guidelines.

8 (c) [~~(b)~~] To qualify for participation in the original
9 capital access program, a line of credit must:

10 (1) be an account at a financial institution under
11 which the financial institution agrees to lend money to a person
12 from time to time to finance one or more projects, activities, or
13 enterprises that are authorized by this subchapter; and

14 (2) contain the same restrictions, to the extent
15 possible, that are placed on a capital access loan under the
16 original capital access program that is not a line of credit.

17 SECTION 9. Section 481.407, Government Code, is amended to
18 read as follows:

19 Sec. 481.407. PROVISIONS RELATING TO CAPITAL ACCESS LOAN
20 UNDER ORIGINAL CAPITAL ACCESS PROGRAM. (a) Except as otherwise
21 provided by this subchapter, the bank may not determine the
22 recipient, amount, or interest rate of a capital access loan under
23 the original capital access program or the fees or other
24 requirements related to the loan.

25 (b) A loan under the original capital access program is not
26 eligible to be enrolled under this subchapter if the loan is for:

27 (1) construction or purchase of residential housing;

1 (2) simple real estate investments, excluding the
2 development or improvement of commercial real estate occupied by
3 the borrower's business or organization; or

4 (3) inside bank transactions, as defined by the policy
5 board.

6 (c) The borrower of a capital access loan under the original
7 capital access program must apply the loan to working capital or to
8 the purchase, construction, or lease of capital assets, including
9 buildings and equipment used by the business or nonprofit
10 organization. Working capital uses include the cost of exporting,
11 accounts receivable, payroll, inventory, and other financing needs
12 of the business or organization.

13 (d) A capital access loan under the original capital access
14 program may be sold on the secondary market with no recourse to the
15 bank or to the loan loss reserve correspondent to the loan and under
16 conditions as may be determined by the bank.

17 (e) When enrolling a loan in the original capital access
18 program, a participating financial institution may specify an
19 amount to be covered under the original capital access program that
20 is less than the total amount of the loan.

21 SECTION 10. Section 481.408, Government Code, is amended to
22 read as follows:

23 Sec. 481.408. ORIGINAL CAPITAL ACCESS PROGRAM RESERVE
24 ACCOUNT. (a) On approval by the bank and after entering into a
25 participation agreement with the bank, a participating financial
26 institution making a capital access loan under the original capital
27 access program shall establish a reserve account. The reserve

1 account shall be used by the institution only to cover any losses
2 arising from a default of a capital access loan under the original
3 capital access program made by the institution under this
4 subchapter or as otherwise provided by this subchapter.

5 (b) When a participating financial institution makes a loan
6 enrolled in the original capital access program, the institution
7 shall require the borrower to pay to the institution a fee in an
8 amount that is not less than two percent but not more than three
9 percent of the principal amount of the loan, which the financial
10 institution shall deposit in the reserve account. The institution
11 shall also deposit in the reserve account an amount equal to the
12 amount of the fee received by the institution from the borrower
13 under this subsection. The institution may recover from the
14 borrower all or part of the amount the institution is required to
15 pay under this subsection in any manner agreed to by the institution
16 and borrower.

17 (c) For each capital access loan under the original capital
18 access program made by a financial institution, the institution
19 shall certify to the bank, within the period prescribed by the bank,
20 that the institution has made a capital access loan, the amount the
21 institution has deposited in the reserve account, including the
22 amount of fees received from the borrower, and, if applicable, that
23 the borrower is financing an enterprise project or is located in or
24 financing a project, activity, or enterprise in an area designated
25 as an enterprise zone under Chapter 2303.

26 (d) On receipt of a certification made under Subsection (c)
27 and subject to Section 481.409, the bank shall deposit in the

1 institution's reserve account for each capital access loan made by
2 the institution under the original capital access program:

3 (1) an amount equal to the amount deposited by the
4 institution for each loan if the institution:

5 (A) has assets of more than \$1 billion; or

6 (B) has previously enrolled loans in the original
7 capital access program that in the aggregate are more than \$2
8 million;

9 (2) an amount equal to 150 percent of the total amount
10 deposited under Subsection (b) for each loan if the institution is
11 not described by Subdivision (1); or

12 (3) notwithstanding Subdivisions (1) and (2), an
13 amount equal to 200 percent of the total amount deposited under
14 Subsection (b) for each loan if:

15 (A) the borrower is financing an enterprise
16 project or is located in or financing a project, activity, or
17 enterprise in an area designated as an enterprise zone under
18 Chapter 2303;

19 (B) the borrower is a small or medium-sized
20 business or a nonprofit organization that operates or proposes to
21 operate a day-care center or a group day-care home, as those terms
22 are defined by Section 42.002, Human Resources Code; or

23 (C) the participating financial institution is a
24 community development financial institution, as that term is
25 defined by 12 U.S.C. Section 4702, as amended.

26 (e) A participating financial institution must obtain
27 approval from the bank to withdraw funds from the reserve account.

1 SECTION 11. Section 481.409, Government Code, is amended to
2 read as follows:

3 Sec. 481.409. LIMITATIONS ON STATE CONTRIBUTION TO ORIGINAL
4 CAPITAL ACCESS PROGRAM RESERVE ACCOUNT. (a) The amount deposited
5 by the bank into a participating financial institution's reserve
6 account for any single loan recipient under the original capital
7 access program may not exceed \$150,000 during a three-year period.

8 (b) The maximum amount the bank may deposit into a reserve
9 account for each capital access loan under the original capital
10 access program made under this subchapter is the lesser of \$35,000
11 or an amount equal to:

12 (1) eight percent of the loan amount if:

13 (A) the borrower is financing an enterprise
14 project or is located in or financing a project, activity, or
15 enterprise in an area designated as an enterprise zone under
16 Chapter 2303;

17 (B) the borrower is a small or medium-sized
18 business or a nonprofit organization that operates or proposes to
19 operate a day-care center or a group day-care home, as those terms
20 are defined by Section 42.002, Human Resources Code; or

21 (C) the participating financial institution is a
22 community development financial institution, as that term is
23 defined by 12 U.S.C. Section 4702, as amended; or

24 (2) six percent of the loan amount for any other
25 borrower.

26 SECTION 12. Section 481.410, Government Code, is amended to
27 read as follows:

1 Sec. 481.410. STATE'S RIGHTS WITH RESPECT TO ORIGINAL
2 CAPITAL ACCESS PROGRAM RESERVE ACCOUNT. (a) All of the money in a
3 reserve account established under this subchapter for the original
4 capital access program is property of the state.

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

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

20 (d) The bank shall withdraw from the institution's reserve
21 account under the original capital access program the total amount
22 in the account and any interest earned on the account and deposit
23 the amount in the fund when:

24 (1) a financial institution is no longer eligible to
25 participate in the original capital access program or a
26 participation agreement entered into under this subchapter for the
27 original capital access program expires without renewal by the bank

1 or institution;

2 (2) the financial institution has no outstanding
3 capital access loans under the original capital access program;

4 (3) the financial institution has not made a capital
5 access loan under the original capital access program within the
6 preceding 24 months; or

7 (4) the financial institution fails to submit a report
8 or other document requested by the bank for the original capital
9 access program within the time or in the manner prescribed.

10 SECTION 13. Section 481.411, Government Code, is amended to
11 read as follows:

12 Sec. 481.411. ANNUAL REPORT. A participating financial
13 institution shall submit an annual report to the bank. The report
14 must, at a minimum:

15 (1) provide information regarding outstanding
16 [~~capital access~~] loans, [~~capital access~~] loan losses, and any other
17 information related to participation in a program established under
18 this subchapter [~~on capital access loans~~] the bank considers
19 appropriate;

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

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

24 (4) include information regarding the type and size of
25 businesses and nonprofit organizations with [~~capital access~~] loans
26 under this subchapter.

27 SECTION 14. Section 481.412(a), Government Code, is amended

1 to read as follows:

2 (a) The office shall submit to the legislature an annual
3 status report on the [~~program's~~] activities of all programs
4 established under this subchapter.

5 SECTION 15. The heading to Section 481.415, Government
6 Code, is amended to read as follows:

7 Sec. 481.415. ALLOCATION AND TRANSFER OF MONEY FROM
8 ORIGINAL CAPITAL ACCESS FUND.

9 SECTION 16. Section 481.415(a), Government Code, is amended
10 to read as follows:

11 (a) Notwithstanding any other provision of this subchapter,
12 the bank may allocate money held in or due to the original capital
13 access fund to programs administered by the bank under Section
14 489.108 or Subchapter D, Chapter 489. The bank may transfer money
15 from the original capital access fund to the Texas product
16 development fund or the Texas small business incubator fund.

17 SECTION 17. Section 489.105(b), Government Code, is amended
18 to read as follows:

19 (b) The fund consists of:

20 (1) appropriations for the implementation and
21 administration of this chapter;

22 (2) investment earnings under the original capital
23 access fund established under Section 481.402;

24 (3) fees charged under Subchapter BB, Chapter 481;

25 (4) interest earned on the investment of money in the
26 fund;

27 (5) fees charged under this chapter;

1 (6) investment earnings from the programs
2 administered by the bank;

3 (7) amounts transferred under Section 2303.504(b), as
4 amended by Article 2, Chapter 1134, Acts of the 77th Legislature,
5 Regular Session, 2001;

6 (8) investment earnings under the Texas product
7 development fund under Section 489.211;

8 (9) investment earnings under the Texas small business
9 incubator fund under Section 489.212; and

10 (10) any other amounts received by the state under
11 this chapter.

12 SECTION 18. Section 489.108, Government Code, is amended to
13 read as follows:

14 Sec. 489.108. PROGRAMS, SERVICES, AND FUNDS UNDER BANK'S
15 DIRECTION. Notwithstanding any other law, the bank shall perform
16 the duties and functions of the office with respect to the following
17 programs, services, and funds:

18 (1) the original capital access program established
19 under Section 481.405;

20 (2) the Texas leverage fund;

21 (3) the enterprise zone program established under
22 Chapter 2303;

23 (4) the industrial revenue bond program;

24 (5) the defense economic readjustment zone program
25 established under Chapter 2310;

26 (6) the Empowerment Zone and Enterprise Community
27 grant program established under Section 481.025; and

1 (7) the renewal community program.

2 SECTION 19. Section 489.211(b), Government Code, is amended
3 to read as follows:

4 (b) The product fund is composed of proceeds of bonds issued
5 under this subchapter, financing application fees, loan
6 repayments, guarantee fees, royalty receipts, dividend income,
7 money appropriated by the legislature for authorized purposes of
8 the product fund, amounts received by the state from loans, loan
9 guarantees, and equity investments made under this subchapter,
10 amounts received by the state from federal grants or other sources,
11 amounts transferred from the original capital access fund under
12 Section 481.415, and any other amounts received under this
13 subchapter and required by the bank to be deposited in the product
14 fund. The product fund contains a program account, an interest and
15 sinking account, and other accounts that the bank authorizes to be
16 created and maintained. Money in the product fund is available for
17 use by the board under this subchapter. Investment earnings under
18 the product fund must be transferred to the fund created under
19 Section 489.105. Notwithstanding any other provision of this
20 subchapter, any money in the product fund may be used for debt
21 service.

22 SECTION 20. Section 489.212(b), Government Code, is amended
23 to read as follows:

24 (b) The small business fund is composed of proceeds of bonds
25 issued under this subchapter, financing application fees, loan
26 repayments, guarantee fees, royalty receipts, dividend income,
27 money appropriated by the legislature for authorized purposes of

1 the small business fund, amounts received by the state from loans,
2 loan guarantees, and equity investments made under this subchapter,
3 amounts received by the state from federal grants or other sources,
4 amounts transferred from the original capital access fund under
5 Section 481.415, and any other amounts received under this
6 subchapter and required by the bank to be deposited in the small
7 business fund. The small business fund contains a project account,
8 an interest and sinking account, and other accounts that the bank
9 authorizes to be created and maintained. Money in the small
10 business fund is available for use by the board under this
11 subchapter. Investment earnings under the small business fund must
12 be transferred to the fund created under Section 489.105.
13 Notwithstanding any other provision of this subchapter, any money
14 in the small business fund may be used for debt service.

15 SECTION 21. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for immediate
19 effect, this Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I certify that H.B. No. 3271 was passed by the House on April 28, 2021, by the following vote: Yeas 97, Nays 43, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3271 on May 28, 2021, by the following vote: Yeas 101, Nays 44, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3271 was passed by the Senate, with amendments, on May 24, 2021, by the following vote: Yeas 23, Nays 6, 1 present, not voting.

Secretary of the Senate

APPROVED: _____

Date

Governor