

1-1 By: Ordaz Perez, et al. (Senate Sponsor - Blanco) H.B. No. 3271
 1-2 (In the Senate - Received from the House April 28, 2021;
 1-3 May 14, 2021, read first time and referred to Committee on Business
 1-4 & Commerce; May 21, 2021, reported favorably by the following vote:
 1-5 Yeas 6, Nays 0; May 21, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Hancock	X			
1-8 Nichols			X	
1-9 Campbell	X			
1-10 Creighton	X			
1-11 Johnson	X			
1-12 Menéndez	X			
1-13 Paxton	X			
1-14 Schwertner			X	
1-15 Whitmire			X	

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to establishing loan programs to assist certain
 1-20 micro-businesses by increasing access to capital; authorizing
 1-21 fees.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Chapter 481, Government Code, is amended by
 1-24 adding Subchapters CC and EE to read as follows:

1-25 SUBCHAPTER CC. MICRO-BUSINESS DISASTER RECOVERY PROGRAM

1-26 Sec. 481.451. DEFINITIONS. In this subchapter:

1-27 (1) "Community development financial institution" has
 1-28 the meaning assigned by 12 U.S.C. Section 4702.

1-29 (2) "Declared disaster" has the meaning assigned by
 1-30 Section 481.551.

1-31 (3) "Default rate" means the percentage of
 1-32 micro-business disaster recovery loans made that did not meet the
 1-33 payment terms during a period specified by the bank.

1-34 (4) "Fund" means the micro-business recovery fund
 1-35 established under Section 481.452.

1-36 (5) "Micro-business" means a corporation,
 1-37 partnership, sole proprietorship, or other legal entity that:

1-38 (A) is domiciled in this state and has at least 95
 1-39 percent of its employees located in this state;

1-40 (B) is formed to make a profit; and

1-41 (C) employs not more than 20 employees.

1-42 (6) "Micro-business disaster recovery loan" or
 1-43 "disaster recovery loan" means a loan made by a participating
 1-44 community development financial institution to micro-businesses
 1-45 under the program.

1-46 (7) "Program" means the micro-business disaster
 1-47 recovery loan program established under this subchapter.

1-48 Sec. 481.452. MICRO-BUSINESS RECOVERY FUND. (a) The
 1-49 micro-business recovery fund is a dedicated account in the general
 1-50 revenue fund.

1-51 (b) Appropriations for the implementation and
 1-52 administration of this subchapter and Subchapter EE and any other
 1-53 amounts received by the bank or state under this subchapter or
 1-54 Subchapter EE shall be deposited in the fund.

1-55 (c) Money in the fund may be appropriated only to the bank
 1-56 for use in carrying out the purposes of this subchapter and
 1-57 Subchapter EE.

1-58 (d) The financial transactions of the fund are subject to
 1-59 audit by the state auditor as provided by Chapter 321.

1-60 Sec. 481.453. POWERS OF BANK IN ADMINISTERING
 1-61 MICRO-BUSINESS RECOVERY FUND. In administering the fund, the bank

2-1 has the powers necessary to carry out the purposes of this
 2-2 subchapter and Subchapter EE, including the power to:
 2-3 (1) make, execute, and deliver contracts,
 2-4 conveyances, and other instruments necessary to the exercise of its
 2-5 powers;

2-6 (2) invest money at the bank's discretion in
 2-7 obligations determined proper by the bank, and select and use
 2-8 depositories for its money;

2-9 (3) employ personnel and counsel and pay those persons
 2-10 from money in the fund legally available for that purpose; and

2-11 (4) impose and collect fees and charges in connection
 2-12 with any transaction and provide for reasonable penalties for
 2-13 delinquent payment of fees or charges.

2-14 Sec. 481.454. ESTABLISHMENT OF LOAN PROGRAM; PURPOSE. (a)
 2-15 The bank shall establish and administer a revolving loan program as
 2-16 provided by this subchapter.

2-17 (b) The program shall expand access to capital for
 2-18 qualifying micro-businesses to create jobs in this state.

2-19 Sec. 481.455. PROGRAM ADMINISTRATION. (a) The bank, under
 2-20 the program, shall provide zero interest loans to eligible
 2-21 community development financial institutions for purposes of
 2-22 making interest-bearing loans to qualifying micro-businesses that
 2-23 have difficulty in accessing capital following a declared disaster.

2-24 (b) A loan made by an eligible community development
 2-25 financial institution under the program:

2-26 (1) must be made to a micro-business that:

2-27 (A) is in good standing under the laws of this
 2-28 state; and

2-29 (B) did not owe delinquent taxes to a taxing unit
 2-30 of this state before the date of the initial issuance of the
 2-31 disaster declaration;

2-32 (2) may not be made to a micro-business that:

2-33 (A) has total revenue that exceeds the amount for
 2-34 which no franchise tax is due under Section 171.002(d)(2), Tax
 2-35 Code;

2-36 (B) is a franchise;

2-37 (C) is a national chain with operations in this
 2-38 state;

2-39 (D) is a lobbying firm; or

2-40 (E) is a private equity firm or backed by a
 2-41 private equity firm; and

2-42 (3) must meet any other criteria provided by this
 2-43 subchapter.

2-44 (c) Payments on micro-business disaster recovery loans
 2-45 shall be made directly to the lending community development
 2-46 financial institutions. The financial institutions shall use the
 2-47 loan payment money received from borrowers to make new loans as
 2-48 provided by this subchapter.

2-49 (c-1) In awarding loans under the program, a community
 2-50 development financial institution participating in the program
 2-51 shall give preference to applicant micro-businesses that did not
 2-52 receive a loan or grant under the Coronavirus Aid, Relief, and
 2-53 Economic Security Act (15 U.S.C. Section 9001 et seq.), as amended
 2-54 by the Paycheck Protection Program Flexibility Act of 2020 (Pub. L.
 2-55 No. 116-142) and the Consolidated Appropriations Act, 2021 (Pub. L.
 2-56 No. 116-260).

2-57 (d) All income received on a loan made by a community
 2-58 development financial institution participating in the program is
 2-59 the property of the financial institution. Income received on a
 2-60 loan includes the payment of interest by a borrower micro-business
 2-61 and the administrative fees assessed by the community development
 2-62 financial institution.

2-63 (e) A community development financial institution
 2-64 participating in the program shall repay the bank the zero interest
 2-65 loans borrowed by the financial institution under the program
 2-66 quarterly, and the bank or this state is not responsible or liable
 2-67 for any defaults in micro-business disaster recovery loans made by
 2-68 the community financial institution.

2-69 Sec. 481.456. RULEMAKING. The executive director shall

3-1 adopt rules relating to the implementation of the program,
 3-2 including:

3-3 (1) rules establishing eligibility criteria for
 3-4 community development financial institutions that want to
 3-5 participate in the program; and

3-6 (2) any other rules necessary to accomplish the
 3-7 purposes of this subchapter.

3-8 Sec. 481.457. OVERSIGHT. (a) A community development
 3-9 financial institution participating in the program shall report
 3-10 quarterly to the bank:

3-11 (1) the names of micro-businesses that have received a
 3-12 disaster recovery loan;

3-13 (2) the current balance of all outstanding disaster
 3-14 recovery loans;

3-15 (3) the default rate on existing disaster recovery
 3-16 loans; and

3-17 (4) any other information the bank requires.

3-18 (b) A community development financial institution
 3-19 participating in the program shall prepare a detailed financial
 3-20 statement each quarter.

3-21 (c) A community development financial institution shall
 3-22 allow the bank to inspect the institution's financial records on
 3-23 request.

3-24 Sec. 481.458. PROGRAM ANNUAL STATUS REPORT. The bank shall
 3-25 issue an annual status report on the program. The bank shall
 3-26 deliver its report to the governor, the lieutenant governor, the
 3-27 speaker of the house of representatives, and the standing
 3-28 committees of the legislature with primary jurisdiction over
 3-29 micro-businesses and economic development.

3-30 SUBCHAPTER EE. MICRO-BUSINESS ACCESS TO CAPITAL PROGRAM

3-31 Sec. 481.551. DEFINITIONS. In this subchapter:

3-32 (1) "Community development financial institution" has
 3-33 the meaning assigned by 12 U.S.C. Section 4702.

3-34 (2) "Declared disaster" means:

3-35 (A) a declaration of a state of disaster under
 3-36 Section 418.014 or 418.108; or

3-37 (B) a disaster declared by the president of the
 3-38 United States, if any part of this state is named in the federally
 3-39 designated disaster area.

3-40 (3) "Fund" means the micro-business recovery fund
 3-41 established under Section 481.452.

3-42 (4) "Micro-business" has the meaning assigned by
 3-43 Section 481.451.

3-44 (5) "Micro-business access to capital loan" means a
 3-45 loan that is entitled to be secured by the fund as provided by this
 3-46 subchapter.

3-47 (6) "Participating financial institution" means a
 3-48 community development financial institution participating in the
 3-49 program.

3-50 (7) "Program" means the micro-business access to
 3-51 capital program established under this subchapter.

3-52 (8) "Reserve account" means an account established in
 3-53 a participating financial institution on approval of the bank in
 3-54 which money is deposited to serve as a source of additional revenue
 3-55 to reimburse the financial institution for losses on loans enrolled
 3-56 in the program.

3-57 Sec. 481.552. MICRO-BUSINESS ACCESS TO CAPITAL PROGRAM.

3-58 (a) The bank shall establish a micro-business access to capital
 3-59 program to assist a participating financial institution in making
 3-60 loans to micro-businesses that have suffered economic injury as a
 3-61 result of a declared disaster and that face barriers in accessing
 3-62 capital.

3-63 (b) The bank shall use money in the fund to make a deposit in
 3-64 a participating financial institution's reserve account in an
 3-65 amount specified by this subchapter to be a source of money the
 3-66 institution may receive as reimbursement for losses attributable to
 3-67 loans in the program.

3-68 (c) To participate in the program, a financial institution
 3-69 must be an eligible community development financial institution.

4-1 The bank shall determine the eligibility of a community development
 4-2 financial institution to participate in the program and may set a
 4-3 limit on the number of eligible community development financial
 4-4 institutions that may participate in the program.

4-5 (d) To participate in the program, an eligible community
 4-6 development financial institution must enter into a participation
 4-7 agreement with the bank that sets out the terms and conditions under
 4-8 which the bank will make contributions to the institution's reserve
 4-9 account and specifies the criteria for a loan to qualify as a
 4-10 micro-business access to capital loan, including criteria that
 4-11 ensures that a micro-business access to capital loan is not unfair
 4-12 or abusive to the borrower.

4-13 (e) To qualify as a micro-business access to capital loan, a
 4-14 loan:

4-15 (1) must be made to a micro-business that:

4-16 (A) is in good standing under the laws of this
 4-17 state; and

4-18 (B) did not owe delinquent taxes to a taxing unit
 4-19 of this state before the date of the initial issuance of the
 4-20 disaster declaration;

4-21 (2) may not be made to a micro-business that:

4-22 (A) has total revenue that exceeds the amount for
 4-23 which no franchise tax is due under Section 171.002(d)(2), Tax
 4-24 Code;

4-25 (B) is a franchise;

4-26 (C) is a national chain with operations in this
 4-27 state;

4-28 (D) is a lobbying firm; or

4-29 (E) is a private equity firm or backed by a
 4-30 private equity firm; and

4-31 (3) must meet any other criteria provided by this
 4-32 subchapter.

4-33 (f) In awarding micro-business access to capital loans
 4-34 under the program, a participating financial institution shall give
 4-35 preference to applicant micro-businesses that did not receive a
 4-36 loan or grant under the Coronavirus Aid, Relief, and Economic
 4-37 Security Act (15 U.S.C. Section 9001 et seq.), as amended by the
 4-38 Paycheck Protection Program Flexibility Act of 2020 (Pub. L.
 4-39 No. 116-142) and the Consolidated Appropriations Act, 2021 (Pub. L.
 4-40 No. 116-260).

4-41 Sec. 481.553. RULEMAKING AUTHORITY. The executive director
 4-42 shall adopt rules relating to the implementation of the program and
 4-43 any other rules necessary to accomplish the purposes of this
 4-44 subchapter.

4-45 Sec. 481.554. PROVISIONS RELATING TO MICRO-BUSINESS ACCESS
 4-46 TO CAPITAL LOAN. (a) Except as otherwise provided by this
 4-47 subchapter, the bank may not determine the recipient, amount, or
 4-48 interest rate of a micro-business access to capital loan or the fees
 4-49 or other requirements related to the loan.

4-50 (b) A loan is not eligible to be enrolled under this
 4-51 subchapter if the loan is for:

4-52 (1) construction or purchase of residential housing;

4-53 (2) simple real estate investments, excluding the
 4-54 development or improvement of commercial real estate occupied by
 4-55 the borrower's business; or

4-56 (3) inside bank transactions.

4-57 (c) The borrower of a micro-business access to capital loan
 4-58 shall apply the loan to working capital or to the purchase,
 4-59 construction, or lease of capital assets, including buildings and
 4-60 equipment used by the business. Working capital uses include the
 4-61 cost of exporting, accounts receivable, payroll, inventory, and
 4-62 other financing needs of the business.

4-63 (d) A micro-business access to capital loan may be sold on
 4-64 the secondary market with no recourse to the bank or to the loan
 4-65 loss reserve correspondent to the loan and under conditions as may
 4-66 be determined by the bank.

4-67 (e) When enrolling a loan in the program, a participating
 4-68 community development financial institution may specify an amount
 4-69 to be covered under the program that is less than the total amount

5-1 of the loan.

5-2 Sec. 481.555. RESERVE ACCOUNT. (a) On approval by the bank
 5-3 and after entering into a participation agreement with the bank, a
 5-4 participating community development financial institution making a
 5-5 micro-business access to capital loan shall establish a reserve
 5-6 account. The reserve account shall be used by the institution only
 5-7 to cover any losses arising from a default of a micro-business
 5-8 access to capital loan made by the institution under this
 5-9 subchapter or as otherwise provided by this subchapter.

5-10 (b) A participating community development financial
 5-11 institution that makes a loan enrolled in the program shall require
 5-12 the borrower to pay to the institution a fee in an amount that is not
 5-13 less than two percent but not more than three percent of the
 5-14 principal amount of the loan, which the financial institution shall
 5-15 deposit in the reserve account. The institution shall also deposit
 5-16 in the reserve account an amount equal to the amount of the fee
 5-17 received by the institution from the borrower under this
 5-18 subsection. The institution may recover from the borrower all or
 5-19 part of the amount the institution is required to pay under this
 5-20 subsection in any manner agreed to by the institution and borrower.

5-21 (c) For each micro-business access to capital loan made by a
 5-22 community development financial institution, the institution shall
 5-23 certify to the bank, within the period prescribed by the bank, that
 5-24 the institution has made a micro-business access to capital loan
 5-25 and the amount the institution has deposited in the reserve
 5-26 account, including the amount of fees received from the borrower.

5-27 (d) On receipt of a certification made under Subsection (c)
 5-28 and subject to Section 481.556, the bank shall deposit in the
 5-29 institution's reserve account for each micro-business access to
 5-30 capital loan made by the institution an amount equal to 200 percent
 5-31 of the total amount deposited under Subsection (b) for each loan.

5-32 (e) A participating community development financial
 5-33 institution must obtain approval from the bank to withdraw funds
 5-34 from the reserve account.

5-35 Sec. 481.556. LIMITATIONS ON STATE CONTRIBUTION TO RESERVE
 5-36 ACCOUNT. (a) The amount deposited by the bank into a participating
 5-37 community development financial institution's reserve account for
 5-38 any single loan recipient may not exceed \$150,000 during a
 5-39 three-year period.

5-40 (b) The maximum amount the bank may deposit into a reserve
 5-41 account for each micro-business access to capital loan made under
 5-42 this subchapter is the lesser of \$35,000 or an amount equal to eight
 5-43 percent of the loan amount.

5-44 Sec. 481.557. RIGHTS OF STATE WITH RESPECT TO RESERVE
 5-45 ACCOUNT. (a) All of the money in a reserve account established
 5-46 under this subchapter is property of the state.

5-47 (b) The state is entitled to earn interest on the amount of
 5-48 contributions made by the bank, borrower, and institution to a
 5-49 reserve account under this subchapter. The bank shall withdraw
 5-50 monthly or quarterly from a reserve account the amount of the
 5-51 interest earned by the state. The bank shall deposit the amount
 5-52 withdrawn under this subsection into the fund.

5-53 (c) If the amount in a reserve account exceeds an amount
 5-54 equal to 33 percent of the balance of the community development
 5-55 financial institution's outstanding micro-business access to
 5-56 capital loans, the bank may withdraw the excess amount and deposit
 5-57 the amount in the fund. A withdrawal of money authorized under this
 5-58 subsection may not reduce an active reserve account to an amount
 5-59 that is less than \$200,000.

5-60 (d) The bank shall withdraw from the institution's reserve
 5-61 account the total amount in the account and any interest earned on
 5-62 the account and deposit the amount in the fund when:

5-63 (1) a community development financial institution is
 5-64 no longer eligible to participate in the program or a participation
 5-65 agreement entered into under this subchapter expires without
 5-66 renewal by the bank or institution;

5-67 (2) the community development financial institution
 5-68 has no outstanding micro-business access to capital loans;

5-69 (3) the community development financial institution

6-1 has not made a micro-business access to capital loan within the
6-2 preceding 24 months; or

6-3 (4) the community development financial institution
6-4 fails to submit a report or other document requested by the bank
6-5 within the time or in the manner prescribed.

6-6 Sec. 481.558. ANNUAL REPORT. A participating community
6-7 development financial institution shall submit an annual report to
6-8 the bank. The report must:

6-9 (1) provide information regarding outstanding
6-10 micro-business access to capital loans, micro-business access to
6-11 capital loan losses, and any other information on micro-business
6-12 access to capital loans that the bank considers appropriate;

6-13 (2) state the total amount of loans for which the bank
6-14 has made a contribution from the fund under this subchapter;

6-15 (3) include a copy of the institution's most recent
6-16 financial statement; and

6-17 (4) include information regarding the type of
6-18 micro-businesses with loans under this subchapter.

6-19 Sec. 481.559. STATUS REPORT. The office shall submit to the
6-20 legislature an annual status report on the program's activities.

6-21 Sec. 481.560. STATE LIABILITY PROHIBITED. The state is not
6-22 liable to a participating financial institution for payment of the
6-23 principal, the interest, or any late charges on a micro-business
6-24 access to capital loan made under this subchapter.

6-25 SECTION 2. This Act takes effect immediately if it receives
6-26 a vote of two-thirds of all the members elected to each house, as
6-27 provided by Section 39, Article III, Texas Constitution. If this
6-28 Act does not receive the vote necessary for immediate effect, this
6-29 Act takes effect September 1, 2021.

6-30 * * * * *