

Amend HB 3271 (senate committee printing) by striking all below the enacting clause and substituting the following:

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:

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

(B) is formed to make a profit; and

(C) employs not more than 20 employees.

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

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

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

(b) Appropriations for the implementation and administration of this subchapter and any other amounts, including federal allocations, received by the bank or state under this

subchapter shall be deposited in the fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) is a franchise;

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

(D) is a lobbying firm; or

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

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

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

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

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

Sec. 481.456. RULEMAKING. The executive director shall adopt rules relating to the implementation of the program and any other rules necessary to accomplish the purposes of this subchapter, including rules that provide criteria under which community development financial institutions may qualify for the program.

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

(1) the names of micro-businesses that have received a

disaster recovery loan;

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

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

(4) any other information the bank requires.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 481.402. ORIGINAL CAPITAL ACCESS FUND. (a) The

original capital access fund is a dedicated account in the general revenue fund.

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

(c) Money in the fund may be appropriated only to the bank for use in carrying out the purposes of the original capital access program [~~this subchapter~~].

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

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

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

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

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

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

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

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

(c) The bank shall determine the eligibility of a financial

institution to participate in the original capital access program and may set a limit on the number of eligible financial institutions that may participate in the original capital access program.

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

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

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

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

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

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

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

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

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

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

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

(1) be an account at a financial institution under which the financial institution agrees to lend money to a person from time to time to finance one or more projects, activities, or

enterprises that are authorized by this subchapter; and

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

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

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

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

(1) construction or purchase of residential housing;

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

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

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

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

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

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

Sec. 481.408. ORIGINAL CAPITAL ACCESS PROGRAM RESERVE ACCOUNT. (a) On approval by the bank and after entering into a participation agreement with the bank, a participating financial institution making a capital access loan under the original capital access program shall establish a reserve account. The reserve account shall be used by the institution only to cover any losses arising from a default of a capital access loan under the original capital access program made by the institution under this subchapter or as otherwise provided by this subchapter.

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

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

(d) On receipt of a certification made under Subsection (c) and subject to Section 481.409, the bank shall deposit in the institution's reserve account for each capital access loan made by the institution under the original capital access program:

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

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



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

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

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

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

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

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

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

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

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

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

(1) eight percent of the loan amount if:

(A) the borrower is financing an enterprise project or is located in or financing a project, activity, or enterprise in an area designated as an enterprise zone under

Chapter 2303;

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

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

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

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

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

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

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

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

(1) a financial institution is no longer eligible to participate in the original capital access program or a

participation agreement entered into under this subchapter for the original capital access program expires without renewal by the bank or institution;

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

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

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

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

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

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

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

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

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

SECTION 14. Section 481.412(a), Government Code, is amended to read as follows:

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

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

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

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

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

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

(b) The fund consists of:

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

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

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

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

(5) fees charged under this chapter;

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

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

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

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

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

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

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

(1) the original capital access program established

under Section 481.405;

(2) the Texas leverage fund;

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

(4) the industrial revenue bond program;

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

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

(7) the renewal community program.

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

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

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

(b) The small business fund is composed of proceeds of bonds issued under this subchapter, financing application fees, loan repayments, guarantee fees, royalty receipts, dividend income, money appropriated by the legislature for authorized purposes of the small business fund, amounts received by the state from loans,

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

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