By:  Ordaz Perez, Button, et al. H.B. No. 3271

A BILL TO BE ENTITLED

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 Subchapters CC and EE 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" has the meaning assigned by Section 481.551.

(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 Subchapter EE and any other amounts received by the bank or state under this subchapter or Subchapter EE 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 and Subchapter EE.

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

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 and Subchapter EE, 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.

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. The financial institutions shall use the loan payment money received from borrowers to make new loans as provided by this subchapter.

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

(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 repay the bank 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 financial institution.

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

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

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

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.

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

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

SUBCHAPTER EE. MICRO-BUSINESS ACCESS TO CAPITAL PROGRAM

Sec. 481.551.  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)  "Fund" means the micro-business recovery fund established under Section 481.452.

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

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

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

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

(8)  "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 the program.

Sec. 481.552.  MICRO-BUSINESS ACCESS TO CAPITAL PROGRAM. (a) The bank shall establish a micro-business access to capital program to assist a participating financial institution in making loans to micro-businesses that have suffered economic injury as a result of a declared disaster and 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 program.

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

(d)  To participate in the program, an eligible community development 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 micro-business access to capital loan, including criteria that ensures that a micro-business access to capital loan is not unfair or abusive to the borrower.

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

(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.

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

Sec. 481.553.  RULEMAKING AUTHORITY. 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.

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

(b)  A loan 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

(3)  inside bank transactions.

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

(d)  A micro-business access to capital loan 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 program, a participating community development financial institution may specify an amount to be covered under the program that is less than the total amount of the loan.

Sec. 481.555.  RESERVE ACCOUNT. (a) On approval by the bank and after entering into a participation agreement with the bank, a participating community development financial institution making a micro-business access to capital loan 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 micro-business access to capital loan made by the institution under this subchapter or as otherwise provided by this subchapter.

(b)  A participating community development financial institution that makes a loan enrolled in the program 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 micro-business access to capital loan made by a community development financial institution, the institution shall certify to the bank, within the period prescribed by the bank, that the institution has made a micro-business access to capital loan and the amount the institution has deposited in the reserve account, including the amount of fees received from the borrower.

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

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

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

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

Sec. 481.557.  RIGHTS OF STATE WITH RESPECT TO RESERVE ACCOUNT. (a) All of the money in a reserve account established under this subchapter 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. The bank shall withdraw monthly or quarterly from a reserve account 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 exceeds an amount equal to 33 percent of the balance of the community development financial institution's outstanding micro-business access to capital loans, 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 to an amount that is less than $200,000.

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

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

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

(3)  the community development financial institution has not made a micro-business access to capital loan within the preceding 24 months; or

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

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

(1)  provide information regarding outstanding micro-business access to capital loans, micro-business access to capital loan losses, and any other information on micro-business access to capital loans that 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 of micro-businesses with loans under this subchapter.

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

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

SECTION 2.  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.