

By: Ordaz Perez, Button, et al.

H.B. No. 3271

Substitute the following for H.B. No. 3271:

By: Button

C.S.H.B. No. 3271

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

8 SUBCHAPTER CC. MICRO-BUSINESS DISASTER RECOVERY PROGRAM

9 Sec. 481.451. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

24 (C) employs not more than 20 employees.

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

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

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

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

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

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

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

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

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

1 depositories for its money;

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

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

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

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

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

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

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

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

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

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

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

1 Code;

2 (B) is a franchise;

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

5 (D) is a lobbying firm; or

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

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

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

15 (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 repay the bank the zero interest
23 loans borrowed by the financial institution under the program
24 quarterly, and the bank or this state is not responsible or liable
25 for any defaults in micro-business disaster recovery loans made by
26 the community financial institution.

27 Sec. 481.456. RULEMAKING. The executive director shall

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

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

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

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

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

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

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

17 (4) any other information the bank requires.

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

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

24 Sec. 481.458. PROGRAM ANNUAL STATUS REPORT. The bank shall
25 issue an annual status report on the program. The bank shall
26 deliver its report to the governor, the lieutenant governor, the
27 speaker of the house of representatives, and the standing

1 committees of the legislature with primary jurisdiction over
2 micro-businesses and economic development.

3 SUBCHAPTER EE. MICRO-BUSINESS ACCESS TO CAPITAL PROGRAM

4 Sec. 481.551. DEFINITIONS. In this subchapter:

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

7 (2) "Declared disaster" means:

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

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

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

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

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

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

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

25 (8) "Reserve account" means an account established in
26 a participating financial institution on approval of the bank in
27 which money is deposited to serve as a source of additional revenue

1 to reimburse the financial institution for losses on loans enrolled
2 in the program.

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

4 (a) The bank shall establish a micro-business access to capital
5 program to assist a participating financial institution in making
6 loans to micro-businesses that have suffered economic injury as a
7 result of a declared disaster and that face barriers in accessing
8 capital.

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

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

20 (d) To participate in the program, an eligible community
21 development financial institution must enter into a participation
22 agreement with the bank that sets out the terms and conditions under
23 which the bank will make contributions to the institution's reserve
24 account and specifies the criteria for a loan to qualify as a
25 micro-business access to capital loan, including criteria that
26 ensures that a micro-business access to capital loan is not unfair
27 or abusive to the borrower.

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

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

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

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

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

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

13 (B) is a franchise;

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

16 (D) is a lobbying firm; or

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

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

21 Sec. 481.553. RULEMAKING AUTHORITY. The executive director
22 shall adopt rules relating to the implementation of the program and
23 any other rules necessary to accomplish the purposes of this
24 subchapter.

25 Sec. 481.554. PROVISIONS RELATING TO MICRO-BUSINESS ACCESS
26 TO CAPITAL LOAN. (a) Except as otherwise provided by this
27 subchapter, the bank may not determine the recipient, amount, or

1 interest rate of a micro-business access to capital loan or the fees
2 or other requirements related to the loan.

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

5 (1) construction or purchase of residential housing;

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

9 (3) inside bank transactions.

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

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

20 (e) When enrolling a loan in the program, a participating
21 community development financial institution may specify an amount
22 to be covered under the program that is less than the total amount
23 of the loan.

24 Sec. 481.555. RESERVE ACCOUNT. (a) On approval by the bank
25 and after entering into a participation agreement with the bank, a
26 participating community development financial institution making a
27 micro-business access to capital loan shall establish a reserve

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

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

16 (c) For each micro-business access to capital loan made by a
17 community development financial institution, the institution shall
18 certify to the bank, within the period prescribed by the bank, that
19 the institution has made a micro-business access to capital loan
20 and the amount the institution has deposited in the reserve
21 account, including the amount of fees received from the borrower.

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

27 (e) A participating community development financial

1 institution must obtain approval from the bank to withdraw funds
2 from the reserve account.

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

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

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

15 (b) The state is entitled to earn interest on the amount of
16 contributions made by the bank, borrower, and institution to a
17 reserve account under this subchapter. The bank shall withdraw
18 monthly or quarterly from a reserve account the amount of the
19 interest earned by the state. The bank shall deposit the amount
20 withdrawn under this subsection into the fund.

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

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

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

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

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

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

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

19 (1) provide information regarding outstanding
20 micro-business access to capital loans, micro-business access to
21 capital loan losses, and any other information on micro-business
22 access to capital loans that the bank considers appropriate;

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

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

27 (4) include information regarding the type of

1 micro-businesses with loans under this subchapter.

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

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

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