

SENATE AMENDMENTS

2nd Printing

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.

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

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

1 financial institution.

2 (e) A community development financial institution
3 participating in the program shall repay the bank the zero interest
4 loans borrowed by the financial institution under the program
5 quarterly, and the bank or this state is not responsible or liable
6 for any defaults in micro-business disaster recovery loans made by
7 the community financial institution.

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

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

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

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

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

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

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

25 (4) any other information the bank requires.

26 (b) A community development financial institution
27 participating in the program shall prepare a detailed financial

1 statement each quarter.

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

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

11 SUBCHAPTER EE. MICRO-BUSINESS ACCESS TO CAPITAL PROGRAM

12 Sec. 481.551. DEFINITIONS. In this subchapter:

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

15 (2) "Declared disaster" means:

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

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

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

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

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

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

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

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

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

12 (a) The bank shall establish a micro-business access to capital
13 program to assist a participating financial institution in making
14 loans to micro-businesses that have suffered economic injury as a
15 result of a declared disaster and that face barriers in accessing
16 capital.

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

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

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

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

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

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

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

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

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

21 (B) is a franchise;

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

24 (D) is a lobbying firm; or

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

27 (3) must meet any other criteria provided by this

1 subchapter.

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

10 Sec. 481.553. RULEMAKING AUTHORITY. The executive director
11 shall adopt rules relating to the implementation of the program and
12 any other rules necessary to accomplish the purposes of this
13 subchapter.

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

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

- 21 (1) construction or purchase of residential housing;
22 (2) simple real estate investments, excluding the
23 development or improvement of commercial real estate occupied by
24 the borrower's business; or
25 (3) inside bank transactions.

26 (c) The borrower of a micro-business access to capital loan
27 shall apply the loan to working capital or to the purchase,

1 construction, or lease of capital assets, including buildings and
2 equipment used by the business. Working capital uses include the
3 cost of exporting, accounts receivable, payroll, inventory, and
4 other financing needs of the business.

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

9 (e) When enrolling a loan in the program, a participating
10 community development financial institution may specify an amount
11 to be covered under the program that is less than the total amount
12 of the loan.

13 Sec. 481.555. RESERVE ACCOUNT. (a) On approval by the bank
14 and after entering into a participation agreement with the bank, a
15 participating community development financial institution making a
16 micro-business access to capital loan shall establish a reserve
17 account. The reserve account shall be used by the institution only
18 to cover any losses arising from a default of a micro-business
19 access to capital loan made by the institution under this
20 subchapter or as otherwise provided by this subchapter.

21 (b) A participating community development financial
22 institution that makes a loan enrolled in the program shall require
23 the borrower to pay to the institution a fee in an amount that is not
24 less than two percent but not more than three percent of the
25 principal amount of the loan, which the financial institution shall
26 deposit in the reserve account. The institution shall also deposit
27 in the reserve account an amount equal to the amount of the fee

1 received by the institution from the borrower under this
2 subsection. The institution may recover from the borrower all or
3 part of the amount the institution is required to pay under this
4 subsection in any manner agreed to by the institution and borrower.

5 (c) For each micro-business access to capital loan made by a
6 community development financial institution, the institution shall
7 certify to the bank, within the period prescribed by the bank, that
8 the institution has made a micro-business access to capital loan
9 and the amount the institution has deposited in the reserve
10 account, including the amount of fees received from the borrower.

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

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

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

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

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

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

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

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

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

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

26 (3) the community development financial institution
27 has not made a micro-business access to capital loan within the

1 preceding 24 months; or

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

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

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

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

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

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

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

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

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

H.B. No. 3271

1 Act takes effect September 1, 2021.

ADOPTED

MAY 24 2021

Lately Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *[Signature]*

1 Amend H.B. No. 3271 (senate committee printing) by striking
2 all below the enacting clause and substituting the following:

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

5 SUBCHAPTER CC. MICRO-BUSINESS DISASTER RECOVERY PROGRAM

6 Sec. 481.451. DEFINITIONS. In this subchapter:

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

9 (2) "Declared disaster" means:

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

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

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

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

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

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

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

25 (C) employs not more than 20 employees.

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

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

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

6 (b) Appropriations for the implementation and
7 administration of this subchapter and any other amounts, including
8 federal allocations, received by the bank or state under this
9 subchapter shall be deposited in the fund.

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

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

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

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

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

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

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

30 (b) The program shall expand access to capital for
31 qualifying micro-businesses to create jobs in this state and

1 constitutes a capital access program under Subchapter BB.

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

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

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

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

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

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

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

19 (B) is a franchise;

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

22 (D) is a lobbying firm; or

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

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

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

30 (d) All income received on a loan made by a community
31 development financial institution participating in the program is

1 the property of the financial institution. Income received on a
2 loan includes the payment of interest by a borrower micro-business
3 and the administrative fees assessed by the community development
4 financial institution.

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

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

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

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

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

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

26 (4) any other information the bank requires.

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

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

1 request for purposes that relate to loans under the program.

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

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

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

9 SECTION 3. Section 481.401, Government Code, is amended by
10 amending Subdivisions (3), (7), (8), and (9) and adding Subdivision
11 (6-a) to read as follows:

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

13 (6-a) "Original capital access program" means the
14 program established under Section 481.405.

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

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

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

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

26 Sec. 481.402. ORIGINAL CAPITAL ACCESS FUND. (a) The
27 original capital access fund is a dedicated account in the general
28 revenue fund.

29 (b) Appropriations for the implementation and
30 administration of the original capital access program [~~this~~
31 ~~subchapter~~] and any other amounts received by the state for the

1 original capital access program [~~under this subchapter~~] shall be
2 deposited in the fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (2) authorize a consortium of financial institutions

1 to participate in the original capital access program subject to
2 common underwriting guidelines.

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

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

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

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

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

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

22 (1) construction or purchase of residential housing;

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

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

28 (c) The borrower of a capital access loan under the original
29 capital access program must apply the loan to working capital or to
30 the purchase, construction, or lease of capital assets, including
31 buildings and equipment used by the business or nonprofit

1 organization. Working capital uses include the cost of exporting,
2 accounts receivable, payroll, inventory, and other financing needs
3 of the business or organization.

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

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

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

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

23 (b) When a participating financial institution makes a loan
24 enrolled in the original capital access program, the institution
25 shall require the borrower to pay to the institution a fee in an
26 amount that is not less than two percent but not more than three
27 percent of the principal amount of the loan, which the financial
28 institution shall deposit in the reserve account. The institution
29 shall also deposit in the reserve account an amount equal to the
30 amount of the fee received by the institution from the borrower
31 under this subsection. The institution may recover from the

1 borrower all or part of the amount the institution is required to
2 pay under this subsection in any manner agreed to by the institution
3 and borrower.

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

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

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

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

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

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

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

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

1 Chapter 2303;

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

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

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

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

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

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

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

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

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

31 (C) the participating financial institution is a

1 community development financial institution, as that term is
2 defined by 12 U.S.C. Section 4702, as amended; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (a) The office shall submit to the legislature an annual

1 status report on the [~~program's~~] activities of all programs
2 established under this subchapter.

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

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

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

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

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

17 (b) The fund consists of:

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

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

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

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

25 (5) fees charged under this chapter;

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

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

31 (8) investment earnings under the Texas product

1 development fund under Section 489.211;

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

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

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

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

12 (1) the original capital access program established
13 under Section 481.405;

14 (2) the Texas leverage fund;

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

17 (4) the industrial revenue bond program;

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

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

22 (7) the renewal community program.

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

25 (b) The product fund is composed of proceeds of bonds issued
26 under this subchapter, financing application fees, loan
27 repayments, guarantee fees, royalty receipts, dividend income,
28 money appropriated by the legislature for authorized purposes of
29 the product fund, amounts received by the state from loans, loan
30 guarantees, and equity investments made under this subchapter,
31 amounts received by the state from federal grants or other sources,

1 amounts transferred from the original capital access fund under
2 Section 481.415, and any other amounts received under this
3 subchapter and required by the bank to be deposited in the product
4 fund. The product fund contains a program account, an interest and
5 sinking account, and other accounts that the bank authorizes to be
6 created and maintained. Money in the product fund is available for
7 use by the board under this subchapter. Investment earnings under
8 the product fund must be transferred to the fund created under
9 Section 489.105. Notwithstanding any other provision of this
10 subchapter, any money in the product fund may be used for debt
11 service.

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

14 (b) The small business fund is composed of proceeds of bonds
15 issued under this subchapter, financing application fees, loan
16 repayments, guarantee fees, royalty receipts, dividend income,
17 money appropriated by the legislature for authorized purposes of
18 the small business fund, amounts received by the state from loans,
19 loan guarantees, and equity investments made under this subchapter,
20 amounts received by the state from federal grants or other sources,
21 amounts transferred from the original capital access fund under
22 Section 481.415, and any other amounts received under this
23 subchapter and required by the bank to be deposited in the small
24 business fund. The small business fund contains a project account,
25 an interest and sinking account, and other accounts that the bank
26 authorizes to be created and maintained. Money in the small
27 business fund is available for use by the board under this
28 subchapter. Investment earnings under the small business fund must
29 be transferred to the fund created under Section 489.105.
30 Notwithstanding any other provision of this subchapter, any money
31 in the small business fund may be used for debt service.

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

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 27, 2021

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3271 by Ordaz Perez (Relating to establishing loan programs to assist certain micro-businesses by increasing access to capital; authorizing fees.), **As Passed 2nd House**

The fiscal implications of the bill cannot be determined at this time due to the amounts of any state funds to be made available for the loan programs and any interest earned on reserve fund deposits being unknown.

The bill would amend Chapter 481 of the Government Code to establish the Micro-Business Capital Access Program to facilitate capital access for micro-businesses that suffer economic injury from natural disasters. The program would be administered by a Community Development Financial Institution (CDFI) and financed through zero-interest loans provided by the Texas Economic Development Bank (TEDB) in the Office of the Governor.

The bill would also establish the Micro-Business Recovery Fund as a dedicated account in the General Revenue Fund. TEDB would have administrative powers over the account.

The program would be funded by direct appropriation and revenue generated by the program. A participating CDFI would submit quarterly and annual reports to TEDB, which would issue annual reports on the program.

The bill would require a participating CDFI to maintain a loan-default reserve fund consisting of borrower fees and deposits from TEDB. The state would earn interest on reserve fund deposits.

This analysis assumes that the administrative costs associated with the bill could be absorbed within the existing resources of the Office of the Governor.

According to the Comptroller of Public Accounts, the fiscal impact on the state cannot be estimated, due to the amount of any interest earned on reserve fund deposits being unknown.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either in, with, or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

The bill would not make an appropriation, but could establish the basis for an appropriation.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 300 Trusteed Programs - Gov, 304 Comptroller of Public Accounts

LBB Staff: JMc, CMA

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 18, 2021

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3271 by Ordaz Perez (Relating to establishing loan programs to assist certain micro-businesses by increasing access to capital; authorizing fees.), **As Engrossed**

The fiscal implications of the bill cannot be determined at this time due to the amounts of any state funds to be made available for the loan programs and any interest earned on reserve fund deposits being unknown.

The bill would amend the Government Code to establish the micro-business capital access program to facilitate capital access for micro-businesses that suffer economic injury from natural disasters. The program would be administered by a community development financial institution (CDFI) and financed through zero-interest loans provided by the Texas Economic Development Bank (TEDB) in the Office of the Governor.

The bill would also establish the micro-business recovery fund as a dedicated account in the General Revenue Fund. TEDB would have administrative powers over the account.

The program would be funded by direct appropriation and revenue generated by the program. A participating CDFI would submit quarterly and annual reports to TEDB, which would issue annual reports on the program.

The bill would require a participating CDFI to maintain a loan-default reserve fund consisting of borrower fees and deposits from TEDB. The state would earn interest on reserve fund deposits.

This analysis assumes that the administrative costs associated with the bill could be absorbed within the existing resources of the Office of the Governor.

According to the Comptroller of Public Accounts, the fiscal impact on the state cannot be estimated, due to the amount of any interest earned on reserve fund deposits being unknown.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either in, with, or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

The bill would not make an appropriation, but could establish the basis for an appropriation.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 300 Trusteed Programs - Gov, 304 Comptroller of Public Accounts, 451 Department of Banking

LBB Staff: JMc, SZ, DPE, CMA, SD

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 18, 2021

TO: Honorable Angie Chen Button, Chair, House Committee on International Relations & Economic Development

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3271 by Ordaz Perez (relating to establishing loan programs to assist certain micro-businesses by increasing access to capital; authorizing fees.), **Committee Report 1st House, Substituted**

The fiscal implications of the bill cannot be determined at this time due to the amounts of any state funds to be made available for the loan programs and any interest earned on reserve fund deposits being unknown.

The bill would amend the Government Code to establish the micro-business capital access program to facilitate capital access for micro-businesses that suffer economic injury from natural disasters. The program would be administered by a community development financial institution (CDFI) and financed through zero-interest loans provided by the Texas Economic Development Bank (TEDB) in the Office of the Governor.

The bill would also establish the micro-business recovery fund as a dedicated account in the General Revenue Fund. TEDB would have administrative powers over the account.

The program would be funded by direct appropriation and revenue generated by the program. A participating CDFI would submit quarterly and annual reports to TEDB, which would issue annual reports on the program.

The bill would require a participating CDFI to maintain a loan-default reserve fund consisting of borrower fees and deposits from TEDB. The state would earn interest on reserve fund deposits.

This analysis assumes that the administrative costs associated with the bill could be absorbed within the existing resources of the Office of the Governor.

According to the Comptroller of Public Accounts, the fiscal impact on the state cannot be estimated. due to the amount of any interest earned on reserve fund deposits being unknown.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either in, with, or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

The bill would not make an appropriation, but could establish the basis for an appropriation.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 300 Trusteed Programs - Gov, 304 Comptroller of Public Accounts, 451 Department of Banking

LBB Staff: JMc, SZ, CMA, DPE, SD

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

March 31, 2021

TO: Honorable Angie Chen Button, Chair, House Committee on International Relations & Economic Development

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3271 by Ordaz Perez (Relating to establishing a program to assist micro-businesses by increasing access to capital.), **As Introduced**

<p>The fiscal implications of the bill cannot be determined at this time due to a lack of detail regarding the administration and funding of the program that would be established by the bill.</p>

The bill would amend the Government Code to establish a program administered by a community development financial institution to assist micro-businesses by increasing access to capital.

The bill would require the program to be funded by direct appropriation, but according to the Comptroller of Public Accounts (CPA), direct appropriation to a non-state government entity, as in the case of a community development financial institution, is not allowed; any appropriation would have to be to a state agency. The CPA further notes that the bill appears to be missing provisions that would establish the program and provide for the selection of an administering institution.

The bill would not make an appropriation, but could establish the basis for an appropriation.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 300 Trusteed Programs - Gov, 304 Comptroller of Public Accounts, 451 Department of Banking

LBB Staff: JMc, SZ, CMA, DPE