

BILL ANALYSIS

C.S.H.B. 3271
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International Relations & Economic Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many small business owners across Texas are still struggling with the impacts of COVID-19 and are in need of financial assistance to make a full recovery. According to 2018 federal data, Texas has nearly three million sole proprietorships and micro-businesses, meaning those with 20 or fewer employees, many of which have found it exceptionally difficult to stay afloat during the pandemic. For example, according to the Texas Restaurant Association, an estimated 15 percent of restaurants have closed permanently over the last year, and as many as 30 percent more may face closure in the near future. Sadly, many of these businesses were left out of the federal Paycheck Protection Program. C.S.H.B. 3271 seeks to ensure that struggling micro-businesses in Texas can continue to weather the financial storm caused by the COVID-19 pandemic by establishing two loan programs to improve their access to capital.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive director of the Texas Economic Development and Tourism Office in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 3271 amends the Government Code to establish loan programs to assist qualifying micro-businesses that have been adversely affected by a declared disaster by increasing access to capital. The bill defines "micro-business" as a for-profit legal entity with 20 or fewer employees that is domiciled in Texas and has at least 95 percent of its employees located in Texas and defines "declared disaster" as a declaration of a statewide or local state of disaster under the Texas Disaster Act of 1975 or a disaster declared by the U.S. president, if any part of Texas is named in the designated disaster area.

Micro-Business Recovery Fund

C.S.H.B. 3271 establishes the micro-business recovery fund as a dedicated account in the general revenue fund. The bill restricts the appropriation of money in the fund to the Texas Economic Development Bank for carrying out the bill's purposes and subjects the financial transactions of the fund to audit by the state auditor. The bill requires appropriations for the implementation and administration of the bill's provisions and any other amounts received by the bank or the state under those provisions to be deposited in the fund. In administering the fund, the bank has the powers necessary to carry out the bill's purposes, including the power to do the following:

- make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise of its powers;
- invest money at the bank's discretion in obligations determined proper by the bank, and select and use depositories for its money;
- employ personnel and counsel and pay those persons from money in the fund legally available for that purpose; and
- impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment of fees or charges.

Micro-Business Disaster Recovery Program

C.S.H.B. 3271 requires the bank to establish and administer a revolving loan program to expand access to capital for micro-businesses to create jobs in Texas. The bill requires the bank to provide zero interest loans under the program to eligible community development financial institutions (CDFIs), as that term is defined by federal law, for purposes of making interest-bearing loans to qualifying micro-businesses that have difficulty in accessing capital following a declared disaster. The bill establishes conditions of eligibility or ineligibility for micro-businesses seeking loans under the program and requires payments on the loans to be made directly to the lending CDFIs, who must in turn use the loan payment money received to make new loans.

C.S.H.B. 3271 establishes that all income received on a loan made by a participating CDFI, including interest paid by a micro-business borrower and administrative fees assessed by the CDFI, is the property of the CDFI. The bill requires the CDFI to repay quarterly to the bank the zero interest loans borrowed by the CDFI. Neither the bank nor the state is responsible or liable for any defaults in the loans made by the CDFI.

C.S.H.B. 3271 requires a participating CDFI to report specified information quarterly to the bank, to prepare a detailed quarterly financial statement, and to allow the bank to inspect its financial records on request. The bill requires the bank to issue an annual status report on the program and deliver the report to the governor, the lieutenant governor, the speaker of the house of representatives, and the applicable standing legislative committees.

C.S.H.B. 3271 requires the executive director of the Texas Economic Development and Tourism Office (TEDTO) to adopt rules relating to the implementation of the program, including rules establishing eligibility criteria for CDFIs that want to participate and any other rules necessary to accomplish the program's purposes.

Micro-Business Access to Capital Program

C.S.H.B. 3271 requires the bank to establish a micro-business access to capital program to assist a participating CDFI 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. The bill requires the bank to use money in the micro-business recovery fund to make a deposit in a participating CDFI's reserve account to be a source of money the CDFI may receive as reimbursement for losses attributable to loans in the program. The bank must determine the eligibility of a CDFI to participate in the program and may set a limit on the number of eligible CDFIs that may participate.

C.S.H.B. 3271 requires an eligible CDFI seeking to participate in the program to enter into a participation agreement with the bank that sets out the terms and conditions under which the bank will make contributions to the CDFI's reserve account and specifies the criteria for a loan to qualify as a micro-business access to capital loan. The bill establishes certain eligibility criteria for a qualifying loan, with respect to characteristics of a recipient micro-business and certain prohibited uses of the loan, but prohibits the bank from determining the recipient,

amount, or interest rate of a loan or the related fees or other requirements except as otherwise provided by the bill.

C.S.H.B. 3271 restricts a borrower's use of loan funds to the working capital uses specified by the bill or the purchase, construction, or lease of capital assets. The bill authorizes a participating CDFI, when enrolling a loan in the program, to specify an amount less than the total amount of the loan to be covered under the program. The bill provides for the sale of a loan on the secondary market.

C.S.H.B. 3271 requires a participating CDFI, on approval by the bank and after entering into a participation agreement, to establish a reserve account to be used to cover any losses arising from a default of an applicable loan made by the CDFI. The bill requires a CDFI that makes a loan under the program to require the borrower to pay a fee, to be deposited in the reserve account, of not less than two percent but not more than three percent of the principal and requires the CDFI to deposit an additional amount equal to the borrower's fee in the reserve account. The CDFI may recover from the borrower all or part of the amount the CDFI is required to pay into the reserve account in any manner agreed to by the CDFI and borrower.

C.S.H.B. 3271 requires a CDFI, for each applicable loan made, to certify to the bank within the period prescribed by the bank the fact of the loan and the corresponding amount the CDFI has deposited in the reserve account, including the amount of fees received from the borrower. On receipt of the certification, the bank must deposit in the CDFI's reserve account, for each applicable loan made by the CDFI, 200 percent of the total amount deposited in the reserve account by the CDFI on behalf of itself and the borrower for that loan. A CDFI must obtain approval from the bank to withdraw funds from the reserve account.

C.S.H.B. 3271 caps the amount deposited by the bank into a participating CDFI's reserve account for any single loan recipient at \$150,000 during a three-year period and caps the amount the bank may deposit into a reserve account for each loan made under the program at the lesser of \$35,000 or eight percent of the loan amount. The bill establishes the state's rights with respect to money in a CDFI reserve account established under the program, including the state's entitlement to earn interest on contributions and the bank's authority to withdraw certain amounts or the balance of the account, subject to certain conditions. The bill exempts the state from liability to a participating CDFI for payment of the principal, the interest, or any late charges on a loan made under the program.

C.S.H.B. 3271 requires a participating CDFI to submit an annual report to the bank and sets out the required contents of the report. The bill requires TEDTO to submit an annual status report on the program's activities to the legislature.

C.S.H.B. 3271 requires the executive director of TEDTO to adopt rules relating to the implementation of the program and any other rules necessary to accomplish the purposes of the program.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3271 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute, unlike the original, restricts eligibility for loans under its provisions to a micro-business whose issues regarding access to capital follow or result from a declared disaster, as applicable.

The original established a micro-business capital access program under which a CDFI administering the program would provide capital access loans to micro-businesses that face barriers accessing capital. The substitute does not include provisions relating to this program but instead includes provisions requiring the Texas Economic Development Bank to establish the following:

- a micro-business access to capital program with a substantially different structure from the program of the same name in the original, under which the bank provides certain funding through a reserve account to assist in covering associated losses incurred by participating CDFIs in making qualifying loans; and
- a second loan program, the disaster recovery loan program, administered by the bank under which the bank provides zero interest loans to eligible CDFIs for the purpose of making interest-bearing loans to qualifying micro-businesses.

The substitute retains provisions of the original regarding oversight and an annual program report and makes those provisions applicable to the disaster recovery loan program. The substitute includes provisions not in the original granting rulemaking authority to the executive director of TEDTO for purposes of the loan programs.

The substitute includes provisions not in the original establishing the micro-business recovery fund and setting out the related administration powers of the bank.

The original made micro-businesses eligible for a loan from the existing TEDTO capital access program in addition to eligibility for the loan program established by the bill, whereas the substitute does not.

The substitute changes the applicable definition of "micro-business" from the definition established by the original as follows:

- removes the requirement for the entity to be independently owned and operated; and
- increases the minimum percentage of the entity's employees who must be located in Texas from 51 percent to 95 percent.