

SUBJECT: Creating micro-business loan program for disaster recovery, capital access

COMMITTEE: International Relations and Economic Development — committee substitute recommended

VOTE: 7 ayes — Button, C. Morales, Beckley, C. Bell, Canales, Metcalf, Ordaz Perez

0 nays

2 absent — Hunter, Larson

WITNESSES: For — Janie Barrera, LiftFund Inc; Annie Spilman, NFIB; Martin Gutierrez, San Antonio Hispanic Chamber of Commerce; Megan Herring, Texas Association of Business; Kela Nabors; (*Registered, but did not testify*: Bill Kelly, City of Houston Mayor's Office; Stephen Scurlock, Independent Bankers Association of Texas; Kelsey Streufert, Texas Restaurant Association)

Against — None

BACKGROUND: Concerns have been raised that many small businesses in Texas are struggling with the economic impacts of the COVID-19 pandemic and need financial assistance. Some have suggested establishing loan programs to improve access to capital.

DIGEST: CSHB 3271 would create a program for community development financial institutions to make loans to micro-businesses for disaster recovery and a program for the Texas Economic Development Bank to assist participating financial institutions in making such loans.

Disaster recovery program. The bill would require the Texas Economic Development Bank to establish and administer a revolving loan program to expand access to capital for qualifying micro-businesses to create jobs in the state.

"Micro-business" would mean a corporation, partnership, sole proprietorship, or other legal entity that was domiciled in Texas and had at least 95 percent of its employees located in the state, was formed to make a profit, and employed no more than 20 employees.

The bank would have to provide zero interest loans to eligible community development financial institutions for the purpose of making interest-bearing loans to qualifying micro-businesses that had difficulty in accessing capital following a declared disaster.

A "declared disaster" would include a declaration of a statewide or local state of disaster or a disaster declared by the U.S. president.

A loan made under the program would have to be made to a micro-business that was in good standing under state law and did not owe delinquent taxes before the disaster declaration.

A loan could not be made to a micro-business that:

- had total revenue that exceeded the amount for which no franchise tax was due (\$1 million);
- was a franchise;
- was a national chain;
- was a lobbying firm; or
- was a private equity firm or was backed by a private equity firm.

Payments on disaster recovery loans would have to be made directly to the lending community development financial institutions, which would use the money to make new loans. All income received on a loan would be the property of the financial institution, including interest and administrative fees.

A financial institution participating in the program would have to repay the bank the zero interest loans quarterly, and neither the bank nor the state would be responsible or liable for any defaults in micro-business disaster recovery loans made by the institution.

Access to capital program. CSHB 3271 would require the Texas Economic Development Bank to establish a micro-business access to capital program to assist a participating financial institution in making loans to micro-businesses that had suffered economic injury as a result of a declared disaster and faced barriers in accessing capital.

The bank would have to use money in the micro-business recovery fund to make a deposit in a participating financial institution's reserve account to be a source of money the institution could receive as reimbursement for losses attributable to disaster recovery loans.

To participate in the program, a financial institution would have to be an eligible community development financial institution as defined by federal law. The bank would have to determine the eligibility of a financial institution and could limit the number of institutions that could participate in the program.

An eligible community development financial institution would have to enter into a participation agreement with the bank that set out the terms and conditions under which the bank would make contributions to the institution's reserve account. The agreement would have to specify the criteria for a loan, including criteria that ensured a loan was not unfair or abusive to a borrower.

Access to capital loans. To qualify as an access to capital loan, a loan would have to be made to an eligible micro-business and meet any other criteria in this bill.

Except as otherwise provided, the Texas Economic Development Bank could 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.

A loan would not be eligible to be enrolled if it was for:

- construction or purchase of residential housing;

- simple real estate investments, excluding the development or improvement of commercial real estate occupied by the borrower's business; or
- inside bank transactions.

The borrower of a loan would have to 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 would include the cost of exporting, accounts receivable, payroll, inventory, and other financing needs.

A loan could 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 determined by the bank.

When enrolling a loan in the program, a participating financial institution could specify an amount to be covered under the program that was less than the total amount of the loan.

Reserve accounts. On approval by the Texas Economic Development Bank and after entering into a participation agreement, a participating financial institution would have to establish a reserve account. The account would have to be used only to cover any losses arising from a default of a micro-business access to capital loan made by the institution.

A financial institution that made a loan under the program would have to require the borrower to pay a fee of 2 to 3 percent of the principal amount, which the institution would deposit in the reserve account. The institution also would have to deposit an amount equal to the amount of the fee. The institution could recover from the borrower all or part of the amount it was required to pay in any manner agreed to by both parties.

For each micro-business access to capital loan, a financial institution would have to certify to the bank that it had made a loan and the amount deposited in the reserve account, including the amount of fees. On receipt of the certification, the bank would have to deposit in the institution's

reserve account an amount equal to 200 percent of the total amount deposited for each loan.

A participating financial institution would have to obtain approval from the bank to withdraw funds from the reserve account.

Limitations on state contributions. The amount deposited by the bank to a reserve account for any single loan recipient could not exceed \$150,000 during a three-year period.

The maximum amount the bank could deposit into a reserve account for each loan would be \$35,000 or 8 percent of the loan amount, whichever was less.

Rights of the state. All of the money in a reserve account established under the bill would be property of the state. The state would be entitled to earn interest on contributions made by the bank, borrower, and institution to a reserve account. The bank would withdraw the state's earned interest monthly or quarterly and deposit the amount into the micro-business recovery loan fund.

If the amount in a reserve account exceeded 33 percent of the balance of the financial institution's outstanding loans, the bank could withdraw the excess amount and deposit it to the fund. A withdrawal could not reduce an active reserve account to less than \$200,000.

The Texas Economic Development Bank would have to withdraw the total amount of a reserve account, including interest, when the participating financial institution:

- was no longer eligible to participate in the program or the participation agreement expired without renewal;
- had no outstanding micro-business access to capital loans;
- had not made a micro-business access to capital loan within the preceding 24 months; or
- failed to submit a report or other document requested by the bank

within the time or in the manner prescribed.

The state would not be liable to a participating financial institution for payment of the principal, interest, or any late charges on a micro-business access to capital loan.

Micro-business recovery fund. The bill would create the micro-business recovery fund as a dedicated account in the general revenue fund. Appropriations for the implementation and administration of the programs under the bill would be deposited in the fund, and money in the fund could be appropriated only to the Texas Economic Development Bank for use in carrying out the purposes of the bill. The financial transactions of the fund would be subject to audit by the state auditor.

The bill would provide the Texas Economic Development Bank the powers necessary to carry out the bill, including the power to:

- make, execute, and deliver contracts, conveyances, and other instruments necessary to exercise its powers;
- invest money in obligations and select and use depositories for its money;
- employ personnel and counsel and pay those persons from money in the fund; and
- impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payments.

Reporting. The bill would require a financial institution participating in the disaster recovery program to report quarterly to the bank:

- the names of micro-businesses that had received a loan;
- the current balance of all outstanding loans;
- the default rate on existing loans; and
- any other information required by the bank.

A financial institution also would have to prepare a detailed financial

statement each quarter and allow the bank to inspect its financial records on request.

The bank would have to issue an annual status report on the disaster recovery program to the governor, lieutenant governor, House speaker, and relevant legislative committees.

The bill also would require a financial institution participating in the access to capital program to submit an annual report to the bank including:

- information regarding outstanding micro-business access to capital loans, losses, and any other information on loans the bank considered appropriate;
- the total amount of loans for which the bank had made a contribution from the fund;
- a copy of the institution's most recent financial statement; and
- information regarding the type of micro-businesses with loans.

The Economic Development and Tourism Office would have to submit to the Legislature an annual status report on the access to capital program's activities.

Rulemaking. The executive director of the Economic Development and Tourism Office would have to adopt rules relating to the implementation of the programs.

Effective date. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

NOTES:

According to the fiscal note, the fiscal implications of the bill cannot be determined because the amounts of any state funds that would be made available for the programs and any interest earned are unknown.