

BILL ANALYSIS

Senate Research Center

H.B. 3271
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Business & Commerce
5/14/2021
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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. 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.

H.B. 3271 amends current law relating to establishing loan programs to assist certain micro-businesses by increasing access to capital and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive director of the Texas Economic Development and Tourism Office in SECTION 1 (Sections 481.456 and 481.553, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 481, Government Code, by adding Subchapters CC and EE, as follows:

SUBCHAPTER CC. MICRO-BUSINESS DISASTER RECOVERY PROGRAM

Sec. 481.451. DEFINITIONS. Defines "community development financial institution," "declared disaster," "default rate," "fund," "micro-business," "micro-business disaster recovery loan," "disaster recovery loan," and "program."

Sec. 481.452. MICRO-BUSINESS RECOVERY FUND. (a) Provides that the micro-business recovery fund (fund) is a dedicated account in the general revenue fund.

(b) Requires that appropriations for the implementation and administration of this subchapter and Subchapter EE and any other amounts received by the Texas Economic Development Bank (bank) or state under this subchapter or Subchapter EE be deposited in the fund.

(c) Authorizes money in the fund to be appropriated only to the bank for use in carrying out the purposes of this subchapter and Subchapter EE.

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

Sec. 481.453. POWERS OF BANK IN ADMINISTERING MICRO-BUSINESS RECOVERY FUND. Provides that in administering the fund, the bank has the powers

necessary to carry out the purposes of this subchapter and Subchapter EE, including the power to:

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

Sec. 481.454. ESTABLISHMENT OF LOAN PROGRAM; PURPOSE. (a) Requires the bank to establish and administer a revolving loan program as provided by this subchapter.

- (b) Requires that the program expand access to capital for qualifying micro-businesses to create jobs in this state.

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

- (b) Provides that a loan made by an eligible community development financial institution under the program:

- (1) is required to be made to a micro-business that is in good standing under the laws of this state and that did not owe delinquent taxes to a taxing unit of this state before the date of the initial issuance of the disaster declaration;

- (2) is prohibited from being made to a micro-business that has total revenue that exceeds the amount for which no franchise tax is due under Section 171.002(d)(2) (relating to providing that a taxable entity is not required to pay any franchise tax for a period if the taxable entity's total revenue is below a certain amount), Tax Code, is a franchise, is a national chain with operations in this state, is a lobbying firm, or is a private equity firm or backed by a private equity firm; and

- (3) is required to meet any other criteria provided by this subchapter.

- (c) Requires that payments on micro-business disaster recovery loans be made directly to the lending community development financial institutions. Requires the financial institutions to use the loan payment money received from borrowers to make new loans as provided by this subchapter.

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

- (d) Provides that all income received on a loan made by a community development financial institution participating in the program is the property of the financial institution. Provides that income received on a loan includes the

payment of interest by a borrower micro-business and the administrative fees assessed by the community development financial institution.

(e) Requires a community development financial institution participating in the program to repay the bank the zero interest loans borrowed by the financial institution under the program quarterly, and provides that the bank or this state is not responsible or liable for any defaults in micro-business disaster recovery loans made by the community financial institution.

Sec. 481.456. RULEMAKING. Requires the executive director of the Texas Economic Development and Tourism Office (executive director) to adopt rules relating to the implementation of the program, including rules establishing eligibility criteria for community development financial institutions that want to participate in the program and any other rules necessary to accomplish the purposes of this subchapter.

Sec. 481.457. OVERSIGHT. (a) Requires a community development financial institution participating in the program to report quarterly to the bank the names of micro-businesses that have received a disaster recovery loan, the current balance of all outstanding disaster recovery loans, the default rate on existing disaster recovery loans, and any other information the bank requires.

(b) Requires a community development financial institution participating in the program to prepare a detailed financial statement each quarter.

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

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

SUBCHAPTER EE. MICRO-BUSINESS ACCESS TO CAPITAL PROGRAM

Sec. 481.551. DEFINITIONS. Defines "community development financial institution," "declared disaster," "fund," "micro-business," "micro-business access to capital loan," "participating financial institution," "program," and "reserve account."

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

(b) Requires the bank to use money in the fund to make a deposit in a participating financial institution's reserve account in an amount specified by this subchapter to be a source of money the institution is authorized to receive as reimbursement for losses attributable to loans in the program.

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

(d) Requires an eligible community development financial institution, 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 institution's reserve account and specifies the criteria for a loan to qualify as a micro-business access to capital loan, including criteria that

ensures that a micro-business access to capital loan is not unfair or abusive to the borrower.

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

(1) is required to be made to a micro-business that is in good standing under the laws of this state and that did not owe delinquent taxes to a taxing unit of this state before the date of the initial issuance of the disaster declaration;

(2) is prohibited from being made to a micro-business that has total revenue that exceeds the amount for which no franchise tax is due under Section 171.002(d)(2), Tax Code, is a franchise, is a national chain with operations in this state, is a lobbying firm, or is a private equity firm or backed by a private equity firm; and

(3) is required to meet any other criteria provided by this subchapter.

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

Sec. 481.553. RULEMAKING AUTHORITY. Requires the executive director to adopt rules relating to the implementation of the program and any other rules necessary to accomplish the purposes of this subchapter.

Sec. 481.554. PROVISIONS RELATING TO MICRO-BUSINESS ACCESS TO CAPITAL LOAN. (a) Prohibits the bank, except as otherwise provided by this subchapter, from determining the recipient, amount, or interest rate of a micro-business access to capital loan or the fees or other requirements related to the loan.

(b) Provides that a loan is not eligible to be enrolled under this subchapter if the loan is for construction or purchase of residential housing, for simple real estate investments, excluding the development or improvement of commercial real estate occupied by the borrower's business, or for inside bank transactions.

(c) Requires the borrower of a micro-business access to capital loan 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. Provides that working capital uses include the cost of exporting, accounts receivable, payroll, inventory, and other financing needs of the business.

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

(e) Authorizes a participating community development financial institution, when enrolling a loan in the program, to specify an amount to be covered under the program that is less than the total amount of the loan.

Sec. 481.555. RESERVE ACCOUNT. (a) Requires a participating community development financial institution making a micro-business access to capital loan, on approval by the bank and after entering into a participation agreement with the bank, to establish a reserve account. Requires that the reserve account be used by the institution only to cover any losses arising from a default of a micro-business access to capital loan made by the institution under this subchapter or as otherwise provided by this subchapter.

(b) Requires a participating community development financial institution that makes a loan enrolled in the program to require the borrower to pay to the institution a fee in an amount that is not less than two percent but not more than three percent of the principal amount of the loan, which the financial institution is required to deposit in the reserve account. Requires the institution to also deposit in the reserve account an amount equal to the amount of the fee received by the institution from the borrower under this subsection. Authorizes the institution to recover from the borrower all or part of the amount the institution is required to pay under this subsection in any manner agreed to by the institution and borrower.

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

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

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

Sec. 481.556. LIMITATIONS ON STATE CONTRIBUTION TO RESERVE ACCOUNT. (a) Prohibits the amount deposited by the bank into a participating community development financial institution's reserve account for any single loan recipient from exceeding \$150,000 during a three-year period.

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

Sec. 481.557. RIGHTS OF STATE WITH RESPECT TO RESERVE ACCOUNT. (a) Provides that all of the money in a reserve account established under this subchapter is property of the state.

(b) Entitles the state to earn interest on the amount of contributions made by the bank, borrower, and institution to a reserve account under this subchapter. Requires the bank to withdraw monthly or quarterly from a reserve account the amount of the interest earned by the state. Requires the bank to deposit the amount withdrawn under this subsection into the fund.

(c) Authorizes the bank, if the amount in a reserve account exceeds an amount equal to 33 percent of the balance of the community development financial institution's outstanding micro-business access to capital loans, to withdraw the excess amount and deposit the amount in the fund. Prohibits a withdrawal of money authorized under this subsection from reducing an active reserve account to an amount that is less than \$200,000.

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

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

- (2) the community development financial institution has no outstanding micro-business access to capital loans;
- (3) the community development financial institution has not made a micro-business access to capital loan within the preceding 24 months; or
- (4) the community development financial institution fails to submit a report or other document requested by the bank within the time or in the manner prescribed.

Sec. 481.558. ANNUAL REPORT. Requires a participating community development financial institution to submit an annual report to the bank. Requires that the report:

- (1) provide information regarding outstanding micro-business access to capital loans, micro-business access to capital loan losses, and any other information on micro-business access to capital loans that the bank considers appropriate;
- (2) state the total amount of loans for which the bank has made a contribution from the fund under this subchapter;
- (3) include a copy of the institution's most recent financial statement; and
- (4) include information regarding the type of micro-businesses with loans under this subchapter.

Sec. 481.559. STATUS REPORT. Requires the Texas Economic Development and Tourism Office to submit to the legislature an annual status report on the program's activities.

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

SECTION 2. Effective date: upon passage or September 1, 2021.