

ACT 212

S.B. NO. 1139

A Bill for an Act Relating to Agriculture and Aquaculture Loans.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. **Purpose.** The purpose of this Act is to foster the development

of aquaculture by expanding the aquaculture loan program to a level generally comparable to that of the farm loan program.

SECTION 2. Chapter 219, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 219-1 Findings and purpose.** The legislature finds that:

- (1) Aquaculture is a potentially viable industry for the State.
- (2) Conventional financial institutions traditionally do not provide loans in the initiating stages for the establishment of new industries.
- (3) No present state agency or program has the authority to financially assist an enterprise engaged in aquaculture.
- (4) The State should initiate a loan program to assist aquaculture and the techniques of aquaculture as a new industry.

The purpose of this chapter is to establish a loan program to financially assist in the development of aquaculture in the State.

**"Sec. 219-2 Definitions.** As used in this chapter:

- (1) "Aquaculture" means the production of aquatic plant and animal life for food and fiber within the ponds and other bodies of water that are within the real property for which real property taxes are assessed and paid by the owner or producer.
- (2) "Board" means the board of agriculture of the department of agriculture.
- (3) "Qualified aquaculturalist" means a person, or association of persons, actively engaged in aquaculture farming, aquacultural produce processing, or aquacultural product development activities.
- (4) "Cooperative" means a nonprofit association of aquaculturalists organized under Chapter 421.

**"Sec. 219-3 Hawaii aquaculture loan program.** There is established the Hawaii aquaculture loan program to be administered by the board of agriculture.

**"Sec. 219-4 Hawaii aquaculture revolving loan fund.** There is a special fund to be known as the aquaculture revolving loan fund from which monies shall be loaned by the department of agriculture under this chapter. All interest and fees collected by the department shall be deposited in a loan reserve fund to the extent needed to carry on the operations of this program. All payments received on account of principal shall be credited to the revolving loan program.

**"Sec. 219-5 Rules and regulations.** The board of agriculture shall have the necessary powers to carry out the purposes of this chapter, including the following:

- (1) Prescribe the qualifications for eligibility of applicants for loans.
- (2) Establish preferences and priorities in determining eligibility for loans and loan repayment requirements.
- (3) Establish the conditions, consistent with the purpose of this chapter, for the granting or for the continuance of a grant of a loan.
- (4) Provide for inspection at reasonable hours of the plant facilities, books and records of an enterprise which has applied for or has been granted

- a loan and to require the submission of progress and final reports.
- (5) To make loans for aquacultural products development such as financing of plant construction, conversion, expansion, the acquisition of land for expansion, the acquisition of equipment, machinery, supplies or materials or for the supplying of working capital consistent with provisions of Section 219-6.
  - (6) To authorize the board to secure loans by duly recorded first mortgages upon the following property within the State:
    - (A) Fee simple farm land;
    - (B) Leaseholds of farm land where the lease has an unexpired term at least two years longer than the term of the loan;
    - (C) Aquaculture products;
    - (D) Other chattels;
    - (E) A second mortgage when any prior mortgage does not contain provisions which might jeopardize the security position of the department or the borrower's ability to repay;
    - (F) Written agreements such as an assignment of income.
  - (7) To administer the Hawaii aquaculture loan revolving fund and to deposit into the fund all monies received as repayment of loans and interest payment.
  - (8) To include in its budget for subsequent fiscal periods amounts necessary to effectuate the purposes of this chapter.
  - (9) Insure loans made to qualified aquaculturalists by private lenders under Section 219-7.
  - (10) Participate in loans made to qualified aquaculturalists by private lenders under Section 219-8.
  - (11) Establish interest rates chargeable by the State for direct loans and by private lenders for insured and participation loans.

**"Sec. 219-6 Loan; limitation and terms.** Loans made under this chapter shall be for the purposes and in accordance with the terms specified in classes "A", "B" and "C" in paragraphs (1), (2) and (3) following and shall be made only to applicants who meet the eligibility requirements specified therein.

- (1) Class A: Aquaculture farm ownership and improvement loans. To provide for:
  - (A) The purchase or improvement of aquaculture farm land and waters;
  - (B) The purchase, construction, or improvement of adequate aquaculture farm dwellings, and other essential aquaculture farm facilities;
  - (C) The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$100,000 and for a term not to exceed forty years. To be eligible the applicant shall (A) derive, or present an acceptable plan to derive, a major portion of his income from and devote, or intend to devote, most of his time to aquaculture farming operations; (B) have or be able to obtain the operating capital, including fishstock and equipment, needed to

successfully operate his aquaculture farm.

- (2) Class B: Aquaculture operation loans. To carry on and improve an aquaculture operation, including:
  - (A) The purchase of aquaculture equipment and fishstock;
  - (B) The payment of production and marketing expenses including materials, labor, and services;
  - (C) The payment of living expenses;
  - (D) The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$75,000 and for a term not to exceed ten years. To be eligible, an applicant shall derive or present an acceptable plan to derive a major portion of his income from and devote, or intend to devote, most of his time to aquaculture operations.

- (3) Class C: Aquaculture cooperative and corporation loans. To provide credit to aquaculturalists' cooperative associations and corporations engaged in marketing, purchasing, and processing, and providing farm business services, including:
  - (A) Facility loans to purchase or improve land, building, and equipment for an amount not to exceed \$250,000 and a term not to exceed twenty years;
  - (B) Operating loans to finance inventories of supplies, warehousing, and shipping commodities, extension of consumer credit to justified farmer-members, and other normal operating expenses for an amount not to exceed \$150,000 and a term not to exceed three years.

To be eligible, a cooperative or corporation shall have at least seventy-five per cent of its board of directors and seventy-five per cent of its membership as shareholders who meet the eligibility requirements prescribed by the board and who devote most of their time to aquaculture operations.

**"Sec. 219-7 Loans insured by the department.**

- (1) The department of agriculture may insure up to ninety per cent of the principal balance of a loan, plus interest due thereon, made to a qualified aquaculturalist by a private lender who is unable otherwise to lend the applicant sufficient funds at reasonable rates.
- (2) Loans insured under this Section shall be limited by the provisions of Section 219-6.
- (3) Interest charged on an insured loan made under the provisions of this Section shall be determined by the board.
- (4) When the application for an insured loan has been approved by the department, the department shall issue to the lender a guaranty for that percentage of the loan on which it insures payment of principal and interest. The lender shall collect all payments from the borrower and otherwise service the loan.
- (5) In return for the department's guaranty, the lender shall remit out of

interest collected an insurance fee of one-half of one per cent a year on the unpaid principal balance of the insured portion of the loan, provided that this fee shall not be added to any amount which the borrower is obligated to pay.

- (6) When any installment of principal and interest has been due for sixty days and has not been paid by the borrower, the department shall issue, on request of the lender, a check for the percentage of the overdue payment guaranteed, thereby acquiring a division of interest in the collateral pledged by the borrower in proportion to the amount of the payment. The department shall be reimbursed for any amounts so paid plus the applicable interest rate, where payment is collected from the borrower.
- (7) Under conditions specified in regulations of the department, the lender may request that a portion or all of the guaranteed percentage of the principal balance of the loan be converted to a participating share held by the department subject to Section 219-7.
- (8) Should the lender deem that foreclosure proceedings are necessary to collect moneys due from the borrower, it shall so notify the department. Within thirty days of the notification, the department may elect to request an assignment of the loan on payment in full to the lender of the principal balance and interest due. Foreclosure proceedings shall be held in abeyance in the interim.
- (9) The lender may reduce the percentage of the principal balance insured under this section at any time.

**"Sec. 219-8 Participation in loans by the department.**

- (1) The department of agriculture may provide funds for a share, not to exceed ninety per cent, of the principal amount of a loan made to a qualified aquaculturalist by a private lender who is unable otherwise to lend the applicant sufficient funds at reasonable rates where the qualified farmer is unable to obtain sufficient funds for the same purpose from the Farmers Home Administration.
- (2) Participation loans under this Section shall be limited by the provisions of Section 219-6 and the department of agriculture's share shall not exceed the maximum amounts specified therefor.
- (3) Interest charged on the private lender's share of the loan shall not be more than the sum of two per cent above the lowest rate of interest charged by all banks, either commercial banks within the meaning of Section 403-3, or national banks excepted under Section 403-10, doing business in the State of Hawaii, on unsecured short term loans made to borrowers who have the highest credit rating with such banks.
- (4) The private lender's share of the loan may be insured by the department up to ninety per cent of the principal balance of the loan, under the provisions of Section 219-7.
- (5) When a participation loan has been approved by the department, its share shall be paid to the participating private lender for disbursement to the borrower. The private lender shall collect all payments from the

- borrower and otherwise service the loan.
- (6) Out of interest collected, the private lender may be paid a service fee to be determined by the department which fee shall not exceed one per cent of the unpaid principal balance of the loan, provided that this fee shall not be added to any amount which the borrower is obligated to pay.
  - (7) The participating private lender may take over a larger percentage or the full principal balance of the loan at any time that it has determined, to the satisfaction of the department, that the borrower is able to pay any increased interest charges resulting.
  - (8) Security for participation loans shall be limited by the provisions of Section 219-5(6). All collateral documents shall be held by the private lender. Division of interest in collateral received shall be in proportion to participation by the department and the private lender."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 4. This Act shall take effect upon its approval.

(Approved June 24, 1977.)

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\*Edited accordingly.