

ACT 104

H.B. NO. 1699

A Bill for an Act Relating to the Hawaii Capital Loan Program.

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

SECTION 1. The legislature finds that the business loan programs administered by the department of business, economic development, and tourism play a significant role in assisting businesses that have no other source of financing, and result in expanding our economic base.

The legislature further finds that businesses would benefit from access to state loan guarantees and increased availability of venture capital.

The purpose of this Act is to:

- (1) Expand the financing capabilities of the department by establishing a loan guarantee program which complements other governmental loan guarantee programs and which provide support to industries in Hawaii that contribute to the growth or diversification of the State's economic base; and
- (2) Allow transfers of funds between the capital loan revolving fund and the venture capital investment fund administered by the Hawaii strategic development corporation.

These changes will result in greater access to growth capital for Hawaii businesses.

SECTION 2. Chapter 210, Hawaii Revised Statutes is amended by adding a new section to be appropriately designated and to read as follows:

“§210- Loans guaranteed by the department. (a) The department may guarantee up to ninety per cent of the principal balance of a loan made to a qualified small business concern by a private lender who is unable to otherwise lend the applicant sufficient funds at reasonable rates; provided that at no time shall the aggregate amount of the State's liability, contingent or otherwise, on loans guaranteed under this section exceed \$10,000,000 based on a reserve level established at twenty-five per cent of the loan guarantee amount, with the reserve amount to be funded being calculated by determining the difference between the capital loan revolving fund balance at the beginning of each fiscal year and its annual authorization ceiling, excluding capital loan balances allocated to underground storage tank projects.

(b) Loans guaranteed under this section shall be limited by section 210-6, except that through regulation, the department may specify:

- (1) That loan guarantees are to be limited to businesses in industries identified by rule as offering significant potential contributions to the growth or diversification of the State's economic base;
- (2) The conditions under which the State may become a co-guarantor or a subordinate guarantor to a loan guarantee offered by a federal government program; and
- (3) The specific types of loans that may be guaranteed under this program, consistent with paragraph (1), including product export financing, contract order-based loans, and processing plant or factory loans.

(c) Interest charged on a guaranteed loan made under this section shall be determined by the department based on the market rate of interest charged by the private lender for a similar type of loan unless waived by the director.

(d) When the application for a guaranteed 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 guarantees payment of principal and interest. The lender shall collect all payments from the borrower and otherwise service the loan.

(e) In return for the department's guaranty, the lender shall remit a one-time fee of two per cent on the principal amount of the guaranteed portion of the loan, at the time the loan is booked, except for the following:

- (1) On loans of \$75,000 or less with a maturity exceeding twelve months, a reduced fee of one per cent; and
- (2) On loans with a maturity of twelve months or less, a reduced fee of one per cent shall be paid.

This fee may be paid by the borrower as a cost for the loan.

(f) 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.

(g) Under conditions specified in rules adopted by 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.

(h) 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.

(i) The lender may reduce the percentage of the principal balance guaranteed under this section at any time."

SECTION 3. Chapter 210-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) There is established the Hawaii capital loan revolving fund into which shall be deposited all moneys received as repayment of loans and interest payments as provided in this chapter. The department may transfer moneys from the Hawaii capital loan revolving fund established by this section to [either] the state disaster revolving loan fund established by section 209-34, [or] the Hawaii innovation development fund established by section 211E-2, or the Hawaii strategic development corporation fund established by chapter 211F, and moneys from these [three] funds shall be disbursed by the department or the director pursuant to chapters 209, 210, [and] 211E, and 211F, respectively. The department or the director may transfer moneys from the state disaster revolving loan fund and the Hawaii innovation development fund to the Hawaii capital loan revolving fund for disbursement pursuant to this chapter.

(b) The total amount of moneys transferred to the state disaster revolving loan fund, the Hawaii capital loan revolving fund, or the Hawaii innovation development fund shall not exceed \$1,000,000 for each respective fund within the calendar year. Any transfers to or from the Hawaii strategic development corporation fund shall be approved by the corporation's board of directors."

SECTION 4. Section 210-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Except as may be expressly provided otherwise for loans made under subsection (b), the foregoing powers shall be subject to the following restrictions and limitations:

- (1) No loans shall be granted unless financial assistance is not available to the applicant. The condition may be waived by the director for participation loans or loan guarantees with a private financial institution;
- (2) The amount of the loan or loans to any one applicant at any one time shall in no case exceed a total of \$1,000,000;
- (3) No loan shall be made for a term exceeding twenty years;
- (4) [Each] Within counties of population exceeding 150,000, each loan shall bear simple interest at a rate of one per cent below the prime rate or at a rate of seven and one-half per cent a year, whichever is lower. For purposes of this paragraph, the prime rate shall be determined on January 1 and July 1 of each year, and shall be the rate charged by the two largest banks in the State [of Hawaii] identified by the department of commerce and consumer affairs. Should there be a difference in rate charged by the institutions, the lower of the two shall be utilized;
- (5) The commencement date for the repayment of the first installment on the principal of each loan may be deferred by the director, but in no event shall such initial payment be deferred in excess of five years; and
- (6) The payment of interest on the principal of a loan may be deferred by the director, but in no event shall interest payments be deferred in excess of two years from the date of issuance of the loan.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 1998; provided that section 4 of this Act shall be repealed on June 30, 2000, and section 210-6(c), Hawaii Revised Statutes, is reenacted as it appeared on July 2, 1996.

(Approved June 3, 1998.)

Note

1. Edited pursuant to HRS §23G-16.5.