

## ACT 290

S.B. NO. 2419

A Bill for an Act Relating to Capital Access Program.

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

SECTION 1. The legislature finds that as of 1999 about nineteen states operated capital access programs. Hawaii was not one of them. The legislature further finds that these programs, first launched by Michigan in 1986, are operated by states to encourage small business lending in a cost-efficient and simple way. Under these programs the bank and the borrower pay an up-front insurance premium which goes into a reserve fund held at the originating bank. The state matches the combined bank and borrower contribution with a deposit into the same reserve fund. The reserve fund allows a lending bank to make slightly higher risk loans than conventional underwriting, with the protection of the reserve fund for its entire pool of loans. These programs allow banks to use their own underwriting standards for eligible loans, without governmental approval of the loan-making decision. Compared with the staff intensiveness of other credit enhancement programs, capital access programs require little administrative costs for banks, borrowers, or the government.

The legislature further finds that capital access programs reach borrowers that are not well served by other credit enhancement programs such as minority-owned businesses and low- and moderate-income communities in substantial numbers. Capital access programs reach businesses, such as new emerging technology companies, that are not typically reached by other small business lending programs. Furthermore, capital access programs in some states are used significantly for start-up businesses and for working capital, both of which are often cited as needs unsatisfied by the private market without public support. Lastly, lending through capital access programs retains and creates a significant number of jobs.

The purpose of this Act is to establish a capital access program in this State to be operated by the department of business, economic development, and tourism.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 13 to be appropriately designated and to read as follows:

**“CHAPTER  
CAPITAL ACCESS PROGRAM**

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Capital access loan” means a loan that is entitled to be secured by the fund.

“Department” means the department of business, economic development, and tourism.

“Financial institution” includes a bank, trust company, banking association, savings and loan association, mortgage company, investment bank, credit union, or nontraditional financial institution.

“Fund” means the Hawaii capital loan revolving fund established in section 210-3.

“Loan” includes a line of credit.

“Medium-sized business” means a corporation, partnership, sole proprietorship, or other legal entity that:

- (1) Is domiciled in this State;
- (2) Is formed to make a profit; and

- (3) Employs one hundred or more but fewer than five hundred full-time employees.

“Nonprofit organization” means a private, nonprofit, tax-exempt corporation, association, or organization listed in section 501(c)(3), Internal Revenue Code of 1986, as amended, that is domiciled in this State.

“Participating financial institution” means a financial institution participating in the program.

“Program” means the capital access program.

“Reserve account” means an account established in a participating financial institution on approval of the department in which money is deposited to serve as a source of additional revenue to reimburse the financial institution for losses on loans enrolled in the program.

“Small business” means a corporation, partnership, sole proprietorship, or other legal entity that:

- (1) Is domiciled in this State;
- (2) Is formed to make a profit;
- (3) Is independently owned and operated; and
- (4) Employs fewer than one hundred full-time employees.

**§ -2 Powers of department in administering the capital access program.** In administering the program, the department shall have all the powers necessary to carry out the purposes of this chapter, 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 department’s discretion in obligations determined proper by the department, and select and use depositories for its money;
- (3) Employ personnel and counsel and pay the 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.

**§ -3 Capital access program.** (a) The department shall establish a capital access program to assist a participating financial institution in making loans to businesses and nonprofit organizations that face barriers in accessing capital.

(b) The department shall use money in the fund to make a deposit in a participating financial institution’s reserve account in an amount specified by this chapter to be a source of money the institution may receive as reimbursement for losses attributable to loans in the program.

(c) The department shall determine the eligibility of a financial institution to participate in the program and may set a limit on the number of eligible financial institutions that may participate in the program.

(d) To participate in the program, an eligible financial institution shall enter into a participation agreement with the department that sets out the terms and conditions under which the department will make contributions to the institution’s reserve account and specifies the criteria for a loan to qualify as a capital access loan.

(e) To qualify as a capital access loan, a loan shall:

- (1) Be made to a small or medium-sized business or to a nonprofit organization;
- (2) Be used by the business or nonprofit organization for any project, activity, or enterprise in Hawaii that fosters economic development; and
- (3) Meet any other criteria provided by this chapter.

§ **-4 Rulemaking authority.** (a) The department shall adopt rules relating to the implementation of the program and any other rules necessary to accomplish the purposes of this chapter. The rules may:

- (1) Provide for criteria under which a certain line of credit issued by an eligible financial institution to a small or medium-sized business or nonprofit organization qualifies to participate in the program; and
  - (2) Authorize a consortium of financial institutions to participate in the program subject to common underwriting guidelines.
- (b) To qualify for participation in the program, a line of credit shall:
- (1) Be an account at a financial institution under which the financial institution agrees to lend money to a person from time to time to finance one or more projects, activities, or enterprises that are authorized by this chapter; and
  - (2) Contain the same restrictions, to the extent possible, that are placed on a capital access loan that is not a line of credit.

§ **-5 Provisions relating to capital access loan.** (a) Except as otherwise provided by this chapter, the department may not determine the recipient, amount, or interest rate of a capital access loan or the fees or other requirements related to the loan.

- (b) A loan is not eligible to be enrolled under this chapter if the loan is for:
  - (1) Construction or purchase of residential housing;
  - (2) Simple real estate investments, excluding the development or improvement of commercial real estate occupied by the borrower's business or organization;
  - (3) Refinancing of existing loans not originally enrolled under this chapter; or
  - (4) Inside bank transactions, as defined by the department.
- (c) The borrower of a capital access loan shall apply the loan to working capital or to the purchase, construction, or lease of capital assets, including buildings and equipment used by the business or nonprofit organization. Working capital uses include the cost of exporting, accounts receivable, payroll, inventory, and other financing needs of the business or organization.
- (d) A capital access loan may be sold on the secondary market under conditions as may be determined by the department.
- (e) When enrolling a loan in the program, a participating financial institution may specify an amount to be covered under the program that is less than the total amount of the loan.

§ **-6 Reserve account.** (a) On approval by the department and after entering into a participation agreement with the department, a participating financial institution making a capital access loan shall establish a reserve account. The reserve account shall be used by the institution only to cover any losses arising from a default of a capital access loan made by the institution under this chapter or as otherwise provided by this chapter.

(b) When a participating financial institution makes a loan enrolled in the program, the institution shall require the borrower to pay to the institution a fee in an amount that is not less than two per cent but not more than three per cent of the principal amount of the loan, which the financial institution shall deposit in the reserve account. The institution shall 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. The institution may 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) For each capital access loan made by a financial institution, the institution shall certify to the department, within the period prescribed by the department, that the institution has made a capital access loan, the amount the institution has deposited in the reserve account, including the amount of fees received from the borrower, and, if applicable, that the borrower is an eligible enterprise zone business located in an area designated as an enterprise zone under chapter 209E.

(d) On receipt of a certification made under subsection (c), the department shall deposit in the institution's reserve account for each capital access loan made by the institution:

- (1) An amount equal to the amount deposited by the institution for each loan if the institution:
  - (A) Has assets of more than \$1,000,000,000; or
  - (B) Has previously enrolled loans in the program that in the aggregate are more than \$2,000,000;
- (2) An amount equal to one hundred fifty per cent of the total amount deposited under subsection (b) for each loan if the institution is not described by paragraph (1); or
- (3) Notwithstanding paragraphs (1) and (2), an amount equal to two hundred per cent of the total amount deposited under subsection (b) for each loan if:
  - (A) The borrower is an eligible enterprise zone business located in an area designated as an enterprise zone under chapter 209E; or
  - (B) The borrower is a small or medium-size business or a nonprofit organization that operates or proposes to operate a child care facility or adult residential care home.

**§ -7 Limitations on state contribution to reserve account.** (a) The amount deposited by the department into a participating financial institution's reserve account for any single loan recipient may not exceed \$100,000 during a three-year period.

(b) The maximum amount the department may deposit into a reserve account for each capital access loan made under this chapter is the lesser of \$35,000 or an amount equal to:

- (1) Eight per cent of the loan amount if:
  - (A) The borrower is an eligible enterprise zone business located in an area designated as an enterprise zone under chapter 209E; or
  - (B) The borrower is a small or medium-size business or a nonprofit organization that operates or proposes to operate a child care facility or adult residential care home;
- or
- (2) Six per cent of the loan amount for any other borrower.

**§ -8 State's rights with respect to reserve account.** (a) All of the money in a reserve account established under this chapter is property of the State.

(b) The State is entitled to earn interest on the amount of contributions made by the department, borrower, and institution to a reserve account under this chapter. The department shall withdraw monthly or quarterly from a reserve account the amount of the interest earned by the State. The department shall deposit the amount withdrawn under this section into the fund.

(c) If the amount in a reserve account exceeds an amount equal to thirty-three per cent of the balance of the financial institution's outstanding capital access loans, the department may withdraw the excess amount and deposit the amount in the fund. A withdrawal of money authorized under this subsection may not reduce an active reserve account to an amount that is less than \$200,000.

(d) The department shall 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 financial institution is no longer eligible to participate in the program or a participation agreement entered into under this chapter expires without renewal by the department or institution; and
- (2) The financial institution has no outstanding capital access loans.

§ **-9 Annual report.** A participating financial institution shall submit an annual report to the department. The report shall:

- (1) Provide information regarding outstanding capital access loans, capital access loan losses, and any other information on capital access loans the department considers appropriate;
- (2) State the total amount of loans for which the department has made a contribution from the fund under this chapter;
- (3) Include a copy of the institution's most recent financial statement; and
- (4) Include information regarding the type and size of businesses and nonprofit organizations with capital access loans.

§ **-10 Reports; audits.** (a) The department shall submit to the legislature an annual status report on the program's activities.

- (b) The financial transactions of the fund are subject to audit by the auditor.

§ **-11 State liability prohibited.** The State is not liable to a participating financial institution for payment of the principal, the interest, or any late charges on a capital access loan made under this chapter.

§ **-12 Gifts and grants.** The department may accept gifts, grants, and donations from any source for the purposes of this chapter.”

SECTION 3. This Act shall take effect upon its approval.

(Approved June 30, 2000.)