

BILL ANALYSIS

Senate Research Center

C.S.S.B. 266
By: Ellis
Economic Development
2-12-97
Committee Report (Substituted)

DIGEST

Currently, the law provides for the Exporter Loan and the Rural Economic Development Loan funds. This bill would replace the current programs with the Capital Access Program. Under the program, financial institutions may make loans to small and medium-sized businesses and to nonprofit corporations. The lender and borrower would make a combined contribution of at least 4 percent of the loan amount to a special reserve fund at the financial institution. The state would then make a matching contribution of varying percentages to the fund, which can be used only to offset any losses incurred under the program.

PURPOSE

As proposed, C.S.S.B. 266 establishes a Capital Access Program in the Texas Department of Commerce to secure certain loans made to small and medium-sized businesses and nonprofit organizations.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the policy board of the Texas Department of Commerce in SECTION 1 (Section 481.406, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 481, Government Code, by adding Subchapter BB, as follows:

SUBCHAPTER BB. CAPITAL ACCESS PROGRAM

Sec. 481.401. DEFINITIONS. Defines "capital access loan," "financial institution," "fund," "loan," "medium-sized business," "nonprofit organization," "participating financial institution," "program," "reserve account," and "small business."

Sec. 481.402. CAPITAL ACCESS FUND. Provides that the capital access fund (fund) is a special account in the state treasury and describes the requirements for the fund.

Sec. 481.403. TRANSFER OF MONEY FROM OTHER FUNDS TO THE CAPITAL ACCESS FUND. Sets forth certain computations the Texas Department of Commerce (department) is required to make at the beginning of each fiscal year in order to transfer money from certain funds to the capital access fund. Requires loan repayments from certain funds to be transferred by the comptroller to the capital access fund.

Sec. 481.404. POWERS OF DEPARTMENT IN ADMINISTERING CAPITAL ACCESS FUND. Sets forth the powers of the department in administering the fund.

Sec. 481.405. CAPITAL ACCESS PROGRAM. Requires the department to establish a capital access program (program). Sets forth the uses of the fund. Requires the department to determine the eligibility of participating financial institutions. Authorizes the department to set a limit on the number of participating financial institutions. Sets forth the qualifications for a loan to be designated a capital access loan (loan).

Sec. 481.406. RULEMAKING AUTHORITY. Requires the policy board of the Texas Department of Commerce (board) to adopt rules to implement and accomplish the purposes of the subchapter. Sets forth guidelines for making rules. Sets forth the required qualifications of a line of credit.

Sec. 481.407. PROVISIONS RELATING TO CAPITAL ACCESS LOAN. Prohibits the department from determining the recipient, amount, or interest rate of a capital access loan or the fees or other requirements related to the loan. Provides that a loan is not eligible to be enrolled if it is for certain purposes. Sets forth certain items to which the loan must be applied. Authorizes the loan to be sold on the secondary market.

Sec. 481.408. RESERVE ACCOUNT. Requires a participating financial institution (institution) making a capital access loan to establish a reserve account, on approval and after entering into a participation agreement with the department. Sets forth the uses of a reserve account. Requires the institution to require the borrower to pay an institution fee not less than two percent but not more than three percent of the principal amount of the loan, which the financial institution shall deposit in the reserve account. Requires the institution to deposit in the reserve account an amount equal to the amount of the fee received from the borrower from this subsection. Sets forth certain information to be certified by the institution to the department for each loan made. Requires the department to deposit certain amounts in the institution's reserve account.

Sec. 481.409. LIMITATIONS ON STATE CONTRIBUTION TO RESERVE ACCOUNT. Sets forth limitations on certain amounts deposited by the department in the institution's reserve account.

Sec. 481.410. STATE'S RIGHTS WITH RESPECT TO RESERVE ACCOUNT. Provides that all money in a reserve account established under this subchapter is property of the state. Provides that the state is entitled to earn interest on certain contributions made to reserve accounts. Requires the department to withdraw a certain amount of money from the reserve account. Requires the department to deposit the amount withdrawn under this subsection into the fund. Authorizes the department to withdraw a certain amount from the reserve account and deposit that amount into the fund. Prohibits a withdrawal from reducing an active reserve account below \$200,000. Requires the department to withdraw the total amount and interest from the institution's reserve account when certain conditions are met.

Sec. 481.411. ANNUAL REPORT. Sets forth the contents of an annual report required to be submitted by the institution to the department.

Sec. 481.412. REPORTS; AUDITS. Requires the department to submit an annual report to the legislature on the program's activities. Provides that the fund is subject to a state auditor's audit.

Sec. 481.413. STATE LIABILITY PROHIBITED. Provides that the state is not liable to an institution for the payment on principal, interest, or any late charges on a loan made under this subchapter.

Sec. 481.414. GIFTS AND GRANTS. Authorizes the department to accept gifts, grants, and donations from any source.

SECTION 2. Amends Section 481.059, Government Code, by adding Subsection (h), to prohibit the department from guaranteeing or making a loan under this section after August 31, 1997.

SECTION 3. Amends Section 481.084, Government Code, by adding Subsection (g), to prohibit the department from guaranteeing or making a loan under this section after August 31, 1997.

SECTION 4. Requires the board to adopt rules required by Section 481.406, Government Code,

no later than December 1, 1997.

SECTION 5. Effective date: September 1, 1997.

SECTION 6. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amends SECTION 1, Section 481.401, Government Code, to add definitions for "financial institution," "loan," "nonprofit organization," and "reserve account."

Amends SECTION 1, Section 481.405, Government Code, to set forth purposes for establishing a capital access program. Provides for new qualification for a capital access loan.

Amends SECTION 1, Section 481.406, Government Code, to set forth guidelines for making rules. Sets forth the qualifications of a line of credit.

Amends SECTION 1, Section 481.407, Government Code, to provide for examples for which a loan is not eligible to be enrolled. Establishes how a loan must be applied.

Amends SECTION 1, Section 481.408, Government Code, to provide for the payment of institution fees by the borrower and the subsequent deposit of those fees. Requires that the department is to deposit a certain amount in a reserve account of a financial institution.

Amends SECTION 1, Section 481.409, Government Code, to require a certain amount to be deposited into a reserve account.

Amends SECTION 1, Section 481.410, Government Code, to provide for state's rights with respect to reserve accounts.

Amends SECTION 1, Section 481.411, Government Code, to set forth what is to be in an annual report.