

JAN 18 2008

A BILL FOR AN ACT

RELATING TO THE HOSPITAL LOAN GUARANTEE PROGRAM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 Part I

2 SECTION 1. The purpose of this Act is to establish a
3 hospital loan guarantee program. Under the program, the
4 department of health may guarantee a portion of a loan by a
5 private lender to a hospital that is experiencing short-term
6 financial problems. The department may make a guarantee only if
7 general funds are appropriated and deposited into the temporary
8 hospital loan guarantee trust fund established under this Act.

9 Part II

10 SECTION 2. **Definitions.** For the purposes of this part,
11 unless the context clearly requires otherwise:

12 "Department" means the department of health.

13 "Hospital" means an institution, licensed by the department
14 in this State, having an organized medical staff that admits
15 patients for inpatient care, diagnosis, observation, and
16 treatment.

17 "Private financial institution" means any private
18 organization authorized to do business under state or federal



1 laws relating to financial institutions, including a bank,
2 savings bank, savings and loan company or association, financial
3 services loan company, or credit union.

4 "Program" means the hospital loan guarantee program
5 established under this part.

6 "Trust fund" means the temporary hospital loan guarantee
7 trust fund established under section 4.

8 SECTION 3. **Loan guarantee by department of health.** (a)

9 The department of health may guarantee a loan to a hospital
10 pursuant to this section only if there is an unexpended and
11 unencumbered balance in the temporary hospital loan guarantee
12 trust fund. This section shall not be operative until general
13 funds have been appropriated and deposited into the trust fund.

14 The department may guarantee up to ninety per cent of the
15 principal balance of a loan made by a private financial
16 institution to a hospital that is experiencing short-term
17 financial problems. A hospital shall be deemed to be
18 "experiencing short-term financial problems" if the department
19 determines that, under a reasonable projection, the hospital is
20 expected to generate a negative net income in the hospital's two
21 fiscal years immediately following the date of application for
22 the guarantee. If two or more hospitals have applications for



1 loan guarantees pending before the department simultaneously,
2 the department shall give the highest preference to the
3 applicant that is located farthest away, by the most direct
4 highway route, from another hospital.

5 If the department decides to guarantee a loan to a
6 hospital, the department shall do so in accordance with this
7 part.

8 (b) At no time shall the aggregate amount of the State's
9 liability, contingent or otherwise, on a loan guaranteed under
10 this part exceed the unexpended and unencumbered balance of the
11 trust fund.

12 (c) A loan guaranteed under this part shall be for a term
13 of not more than _____ years, and the interest rate charged by
14 the lender on the principal balance of the loan shall not exceed
15 _____ per cent compounded annually.

16 (d) A loan guaranteed under this part shall be
17 collateralized with the department on a basis at least equal to
18 the outstanding principal balance of the guaranteed portion of
19 the loan. The collateral shall be in the form of cash, real
20 property, or other marketable assets approved by the department.
21 Any equipment pledged as collateral shall be subject to a
22 buyback or re-stock agreement such that the value of the



1 collateral or method of securing payment from the collateral
2 shall be guaranteed.

3 The collateral held by the department shall not be
4 subordinated to any other person.

5 (e) A loan guarantee for a hospital shall be granted by
6 the department only when the department is reasonably satisfied
7 that the loan would not be made by any private financial
8 institution without the guarantee. To make this determination,
9 the department may require the hospital to provide proof that at
10 least three private financial institutions have refused to make
11 loans to the hospital on a non-guaranteed basis. The proof of
12 refusal by a private financial institution shall contain the
13 date of application, loan amount and purpose, and the private
14 financial institution's reasons for not making the desired loan.

15 (f) The department shall conduct a due diligence
16 examination of the hospital applying for a loan guarantee under
17 this part. The department shall not approve a loan guarantee
18 unless the applicant provides assurance satisfactory to the
19 department that the loan can and will be repaid pursuant to its
20 terms. Reasonable assurance of repayment shall be based on
21 consideration of the applicant's record of past net income or
22 projected future net income.



1 (g) A loan guarantee shall not be granted unless the
2 hospital secures an agreement from its principal creditors that
3 the principal creditors shall withhold any collection actions
4 that may result in the hospital ceasing its operations.

5 (h) Funds provided by the guaranteed loan may be used for
6 working capital; except that a loan guarantee shall not be
7 granted if the direct or indirect purpose or result of granting
8 the loan would be to:

9 (1) Satisfy debts, other than a general excise tax debt,
10 arising prior to the effective date of the guarantee;

11 (2) Provide funds, directly or indirectly, for payment,
12 distribution, or loan to hospital owners, partners, or
13 shareholders;

14 (3) Provide funds for wage or salary increases; or

15 (4) Replenish the funds previously used for any of the
16 purposes enumerated in paragraphs (1) to (3) in
17 anticipation of applying for a loan guarantee under
18 this Act.

19 (i) The department may set additional terms and conditions
20 on the granting of a loan guarantee to a hospital. Upon
21 approval of a loan guarantee, the department shall issue to the
22 lender a guarantee for a designated percentage of the principal



1 loan balance. The lender shall collect all payments from the
2 hospital and otherwise service the loan.

3 (j) In return for the department's guarantee of a loan to
4 a hospital, the lender shall remit to the department, out of the
5 interest collected, a guarantee fee on the unpaid principal
6 balance of the guaranteed portion of the loan; provided that the
7 fee shall not be added to any amount that the hospital is
8 obligated to pay. The department shall determine the amount of
9 the guarantee fee. The guarantee fee shall be deposited into
10 the general fund.

11 (k) A hospital granted a guaranteed loan shall:

12 (1) Expend the loan funds in a manner consistent with the
13 provisions of this part;

14 (2) Keep the department informed of any change in the
15 security for the loan or any major change in the
16 hospital's operation; and

17 (3) Promptly provide information and documents to the
18 department upon request.

19 (l) During the life of a guaranteed loan, the hospital
20 shall submit to the department audited annual financial
21 statements consisting of a balance sheet, income statement, and



1 cash flow statement. The reports shall be submitted no later
2 than four months after the close of the hospital's fiscal year.

3 The department may require the hospital to file interim
4 financial statements and reports as deemed necessary by the
5 department.

6 (m) When any installment of principal and interest for a
7 loan guaranteed by the department has been due for sixty days
8 and has not been paid by the hospital, the department shall pay
9 to the lender the percentage of the overdue payment guaranteed.
10 Upon making the payment, the department shall be deemed to have
11 acquired a division of interest in the collateral pledged by the
12 hospital in proportion to the amount of the payment.

13 If payment is subsequently collected from the hospital, the
14 lender shall reimburse the department for the amount paid by the
15 department. Upon receipt of the reimbursement, the department
16 shall relinquish the interest previously acquired in the
17 collateral.

18 (n) If the lender deems that foreclosure proceedings are
19 necessary to collect moneys due from the hospital, the lender
20 shall notify the department. Within thirty days of the
21 notification, the department may elect to request an assignment
22 of the loan upon payment in full to the lender of the



1 outstanding principal and interest. Foreclosure proceedings
2 shall be held in abeyance until the lender makes a decision on
3 the request for assignment.

4 SECTION 4. **Temporary hospital loan guarantee trust fund.**

5 (a) There is established within the treasury of the State a
6 temporary hospital loan guarantee trust fund.

7 (b) The following shall be deposited into the trust fund:

8 (1) Appropriations by the legislature;

9 (2) Proceeds from the liquidation of collateral acquired
10 by the department arising from the default of a
11 guaranteed loan;

12 (3) Reimbursements from lenders pursuant to section 3(m)
13 of principal and interest previously paid by the
14 department on a delinquent guaranteed loan; and

15 (4) Interest earned on moneys in the trust fund.

16 (c) The moneys in the trust fund shall be expended only
17 for the following:

18 (1) Payment of principal of and interest on a loan
19 guaranteed under section 3(m) that are delinquent; and

20 (2) Payment of principal and interest to lenders pursuant
21 to section 3(n) for the assignment of a guaranteed
22 loan.



1 (d) When the balance of the trust fund exceeds the
2 outstanding principal and interest of the portions of all loans
3 guaranteed pursuant to this Act, the legislature may enact
4 legislation to transfer the excess to the department for the
5 department's discretionary use. The transferred excess amount
6 shall not be used to fund any portion of the department's base
7 budget.

8 Part III

9 SECTION 5. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$ or so much
11 thereof as may be necessary for fiscal year 2008-2009 for
12 deposit into the temporary hospital loan guarantee trust fund
13 established in part II of this Act.

14 SECTION 6. There is appropriated out of the temporary
15 hospital loan guarantee trust fund the sum of \$ or so
16 much thereof as may be necessary for fiscal year 2008-2009 for
17 expenditure as loan guarantees as authorized under part II of
18 this Act.

19 The sum appropriated shall be expended by the department of
20 health for the purposes of part II.

21 SECTION 7. There is appropriated out of the general
22 revenues of the State of Hawaii the sum of \$ or so much



1 thereof as may be necessary for fiscal year 2008-2009 to conduct
2 due diligence examinations of hospitals applying for loan
3 guarantees and to administer loan guarantees made under part II
4 of this Act.

5 The sum appropriated shall be expended by the department of
6 health for the purposes of part II.

7 Part IV

8 SECTION 8. This Act shall take effect upon its approval;
9 provided that part II shall be repealed on June 30, 20 , and
10 any balance remaining in the temporary hospital loan guarantee
11 trust fund shall be deposited into the general fund.

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Report Title:

Hospital Loan Guarantee Program

Description:

Establishes a hospital loan guarantee program to guarantee a portion of a loan by a private financial institution to a hospital that is experiencing short-term financial problems.

Repealed 6/30/20 .

