

**"CHAPTER 155
AGRICULTURAL AND WATER INFRASTRUCTURE LOANS**

Part I. Agricultural Loan Program

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Note

Chapter heading amended by L 2016, c 171, §2.

"PART I. AGRICULTURAL LOAN PROGRAM

Note

Sections 155-1 to 155-14 designated as Part I by L 2016, c 171, §3.

§155-1 Definitions. Whenever used in this chapter:

"Biosecurity" means a system that serves to protect the health of livestock, poultry, and humans from diseases, pests, and pathogens and measures that prevent disease causing agents from entering, spreading, or leaving the farm premises.

"Cooperative" means a nonprofit association of farmers organized under chapter 421.

"Farm land" means land used for agricultural purposes, including general farming, cane growing, fruit growing, flower growing, grazing, dairying, the production of any form of livestock or poultry, and any other form of agricultural activity. It includes land required for an adequate farm dwelling and other essential farm buildings, roads, and wasteland.

"Farm sustainable projects" means projects that improve the operation's viability but are not directly tied to farm crop production. Projects may include but are not limited to photovoltaic energy, hydroelectric power, wind power generation, methane generation, food safety, product traceability, biodiesel production, and ethanol production.

"Food manufacturers" means entities that process Hawaii-grown agricultural products or that utilize Hawaii-grown agricultural products as an ingredient in the manufacturing process. Processed and manufactured agricultural food products include items such as chips, dairy products, guava and papaya puree, macadamia nut products, fruit drinks, juices, nectars, jams, jellies, packaged coffee, processed vegetables, freeze-dried and fresh poi, processed meat products, cookies, and candies.

"Mortgage" includes classes of liens on farm land and other authorized security as are approved by the department of agriculture and the credit instruments secured thereby.

"New farmer" means a new farm enterprise or a person, who by reason of ability, experience, and training, is likely to successfully operate a farm and who otherwise

meets the eligibility requirements of section 155-10 and includes any of the following:

- (1) Persons displaced from employment in an agricultural production enterprise;
- (2) College graduates in agriculture;
- (3) Community college graduates in agriculture;
- (4) Members of the Hawaii Young Farmer Association and National FFA Organization graduates with farming projects;
- (5) Persons who have not less than two years' experience as part-time farmers;
- (6) Graduates from farm trainee programs designed to provide interns with the necessary hands-on skills and management training to successfully operate their own farm;
- (7) Persons who have been farm tenants or farm laborers; or
- (8) Other individuals who have for the two years last preceding their application obtained the major portion of their income from farming operations.

"Part-time farmer" means a person of proven farming ability who:

- (1) Has been operating the person's farm for at least two years on land owned by the person in fee or on land rented or leased from others;
- (2) Is presently devoting a portion of the person's time to farming; and
- (3) Derives between twenty-five to fifty per cent of the person's net cash income from direct participation in farming in its broadest sense.

"Private lender" includes banks, savings and loan associations, credit unions, mortgage companies, and other qualified companies whose business includes the making of loans in the State.

"Qualified farmer" means a person of proven farming ability who operates the person's own farm on land owned by the person in fee or on land rented or leased from others and who is presently devoting, has recently devoted, or intends to devote most of the person's time or who derives a major portion of the person's net cash income from direct participation in farming in its broadest sense. It includes:

- (1) Hawaii partnerships controlled by at least seventy-five per cent by persons who would qualify individually and would meet the eligibility requirements of section 155-10;

- (2) Small corporations where at least seventy-five per cent of each class of stock issued by the corporation is owned by persons who qualify individually and would meet the eligibility requirements of section 155-10 and where seventy-five per cent of the directors are qualified farmers;
- (3) Corporations incorporated in the State primarily for agricultural production purposes; actively engaged in agricultural production for a minimum of two years; and with at least seventy-five per cent of each class of stock owned by persons who are residents of this State or entities that are domiciled in this State;
- (4) Trusts with situs in Hawaii in which the trustee or other individual or entity in control of the operations of the trust would qualify and meet the eligibility requirements of section 155-10; and
- (5) Any other legal entity recognized by the State that conducts business in the State and that is capable of acquiring, holding, encumbering, transferring, or otherwise administering property, whether real or personal, or tangible or intangible, and which entity is owned and controlled by persons or other entities, at least seventy-five per cent of which would qualify and would meet the eligibility requirements of section 155-10. [L 1959, c 278, pt of §1; am L Sp 1959 2d, c 1, §25; am L 1961, c 104, §1(a), (b) and c 132, §2; Supp, §102-1; HRS §155-1; am L 1972, c 87, §1; am L 1974, c 231, §2(1); am L 1975, c 135, §1; am L 1979, c 210, §1; gen ch 1985; am L 1996, c 23, §1; am L 1999, c 32, §1; am L 2000, c 51, §2; am L 2001, c 141, §1; am L 2008, c 209, §1; am L 2011, c 184, §2; am L 2013, c 201, §2; am L 2015, c 155, §2]

Note

Definition of "new farmer program" changed to "new farmer". L 2013, c 201, §2.

" **§155-2 Objectives.** One of the objectives of the department of agriculture shall be to promote the agricultural development of the State by stimulating,

facilitating, and granting loans to qualified farmers and food manufacturers.

The department shall encourage the growth, development, and well-being of agriculture in the State by:

- (1) Maximizing the use of limited state funds and resources in encouraging development of new farmers and new crops;
- (2) Assisting qualified farmers and food manufacturers with loans;
- (3) Encouraging private lenders to make loans to qualified farmers and food manufacturers directly, or in cooperation, or in participation with the State; and
- (4) Providing relief to farmers in times of emergencies.

The department shall also establish standards and criteria pursuant to which loans may be provided to qualified farmers and food manufacturers who cannot secure credit from other sources at reasonable rates and terms. Any assessment of the program shall consider its purpose and intent that involves credit risk beyond that of banks and other private lenders, and the assessment shall be based on standards of similar programs. [L 1959, c 278, pt of §1; am L Sp 1959 2d, c 1, §25; am L 1961, c 132, §2; Supp, §102-3; HRS §155-2; am L 1979, c 222, §2; am L 2000, c 51, §3]

" **§155-3 Restriction.** Loans authorized by this chapter shall require two credit denials, except for class "F" loans for new farmer and farm innovation programs, which shall require one credit denial. This requirement shall be waived for new farmer loans for \$100,000 or less for farm trainees and recent college graduates with a degree in agriculture. This requirement may also be waived by the board of agriculture for emergency loans. Credit denials may be accepted from any of the following:

- (1) Private lenders;
- (2) Members of the farm credit system; or
- (3) The United States Department of Agriculture. [L 1961, c 104, §2; Supp, §102-3.5; HRS §155-3; am L 1979, c 222, §3; am L 1990, c 259, §1; am L 1997, c 258, §1; am L 1999, c 32, §2; am L 2011, c 184, §3; am L 2013, c 201, §3]

" **§155-4 Powers and duties of the department.** The department of agriculture shall have the following powers:

- (1) Employ a secretary, who may be exempt from chapter 76, and other full-time and part-time employees, subject to chapter 76, as are necessary to effectuate the purposes of this chapter, subject further to the limitation of funds in the agricultural loan reserve fund;
- (2) Designate agents throughout the State as may be necessary for property appraisal, the consideration of loan applications, and the supervision of farming operations of borrowers. The agents may be compensated for their services at rates the department in its discretion may fix;
- (3) Initiate and carry on a continuing research and education program, utilizing and coordinating the services and facilities of other government agencies and private lenders to the maximum, to inform qualified farmers concerning procedures for obtaining loans and to inform private lenders concerning the advantages of making loans to qualified farmers;
- (4) Cooperate with private and federal government farm loan sources to increase the amount of loan funds available to qualified farmers in the State;
- (5) Assist individual qualified farmers in obtaining loans from other sources. Insofar as available funds and staff permit, counsel and assist individual farmers in establishing and maintaining proper records to prove their farming ability for loan purposes;
- (6) Insure loans made to qualified farmers and food manufacturers by private lenders under section 155-5;
- (7) Participate in loans made to qualified farmers and food manufacturers by private lenders under section 155-6;
- (8) Make direct loans to qualified farmers and food manufacturers under section 155-8;
- (9) Borrow money for loan purposes;
- (10) Assign and sell mortgages;
- (11) Hold title to, maintain, use, manage, operate, sell, lease, or otherwise dispose of personal and real property acquired by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned;

- (12) Sue and be sued in the name of the "State of Hawaii";
- (13) Exercise incidental powers as are deemed necessary or requisite to fulfill its duty in carrying out the purposes of this chapter;
- (14) Delegate authority to its chairperson to approve loans, where the requested amount plus any principal balance on existing loans to the applicant, does not exceed \$25,000 of state funds; and
- (15) Adopt rules pursuant to chapter 91 necessary for the purpose of this chapter. [L 1959, c 278, pt of §1; am L Sp 1959 2d, c 1, §25; am L Sp 1960, c 10, §1; am L 1961, c 132, §2; am L 1965, c 96, §83; Supp, §102-4; HRS §155-4; am L 1968, c 53, §2; am L 1979, c 222, §4; am L 1982, c 63, §2; am L 1989, c 27, §1; am L 1997, c 258, §2; am L 2000, c 51, §4 and c 253, §150]

Attorney General Opinions

If position of secretary is placed within provision of chapter 76, position must be filled by open competitive examination. Att. Gen. Op. 62-34.

" **§155-5 Loans insured by the department.** (a) 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 farmer, qualified new farmer, or qualified food manufacturer 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 insured under this section and section 155-6 exceed \$10,000,000.

(b) Loans insured under this section shall be limited by the provisions of sections 155-9 through 155-13 for purposes of class "A" through class "I"; provided that class "E" loans to food manufacturers shall not be subject to section 155-10.

(c) Interest charged on an insured loan made under the provisions of this section shall be determined by the department of agriculture based on the market rate of interest charged by the private lender for similar type of loan.

(d) 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.

(e) In return for the department's guaranty, the lender shall remit a one-time insurance fee of two per cent on the principal amount of the insured 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 all guaranteed 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 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 155-6.

(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 insured under this section at any time. [L 1959, c 278, pt of §1; am L Sp 1959 2d, c 1, §25; am L 1961, c 104, §1(c), (d), (e) and c 132, §2; Supp, §102-5; HRS §155-5; am L 1968, c 53, §3; am L 1976, c 234, §1; am L 1979, c 222, §5; am L 1989, c 222, §1; am L 1995, c 79, §1; am L 2000, c 51, §5; am L 2015, c 155, §3]

" **§155-5.5 Loans guaranteed by the department.** (a) The department of agriculture may guarantee up to ninety per cent of the principal balance of a loan, plus interest due thereon, made to a qualified farmer, qualified food manufacturer, or cooperative by a private lender; provided that at no time shall the aggregate amount of the State's liability, contingent or otherwise, on loans guaranteed under this section and sections 155-5, 155-6, and 155-6.5 exceed \$10,000,000.

(b) Loans guaranteed under this section shall be limited by the provisions of sections 155-9 through 155-13 for purposes of classes "A", "B", "C", "D", "E", "F", "G", "H", and "I"; provided that class "E" loans to food manufacturers shall not be subject to section 155-10.

(c) Loans made under this section shall not be subject to the restrictions in section 155-3.

(d) Interest charged on a guaranteed loan made under this section shall not be more than two percentage points above the prime rate charged by the lender.

(e) 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.

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

- (1) Loans of \$75,000 or less with a maturity exceeding twelve months;
- (2) All guaranteed loans with a maturity of twelve months or less.

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

(g) 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 interest at the applicable rate, where payment is collected from the borrower.

(h) Under conditions specified in department rules, 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 155-6.

(i) 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.

(j) The lender may reduce the percentage of the principal balance guaranteed under this section at any time. [L 1999, c 148, §2; am L 2000, c 51, §6; am L 2015, c 155, §4]

" **[\$155-5.6] Loan guaranty; important agricultural lands; agricultural and aquacultural loans.** (a) From July 1, 2009, the chairperson of the board of agriculture may guarantee loans made by commercial lenders authorized to do business in this State, to agricultural producers for the purpose of developing and implementing agricultural projects; provided that the chairperson of the board of agriculture shall determine that:

- (1) The agricultural projects are located on lands designated as important agricultural lands pursuant to part III of chapter 205; and
- (2) The commercial lender has completed its due diligence in approving the loan, including ensuring adequate collateral.

The chairperson of the board of agriculture may impose other conditions that the chairperson deems reasonable to implement the loan guaranty.

(b) In addition to the conditions that the chairperson of the board of agriculture may impose under subsection (a), any loan guaranty made pursuant to this section shall meet the following conditions:

- (1) For any loan that finances operating costs, the maximum term of the loan shall be ten years;
- (2) For any loan that finances capital improvement costs, the maximum term of the loan shall be twenty years;
- (3) The interest rate charged on any loan shall be one per cent below the commercial lender's prime

rate for as long as the loan guaranty is in effect;

- (4) The loan guaranty may be up to eighty-five per cent of the outstanding principal amount of any single loan, but shall not include any fees or accrued interest associated with the loan or its collection; and
- (5) The total principal amount of the guaranteed portion of all loans outstanding at any time shall not exceed \$2,500,000.

(c) The department of agriculture may adopt rules pursuant to chapter 91 to effectuate this section.

(d) As used in this section:

"Agricultural producer" means a farmer, cooperative association, or landowner who derives at least fifty per cent of its gross income from agricultural or aquacultural activities.

"Agricultural project" means a project relating to agricultural or aquacultural operations or capital improvements. [L 2008, c 233, §8]

" **§155-6 Participation in loans by the department.** (a) 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 farmer, qualified new farmer, or qualified food manufacturer by a private lender who is unable otherwise to lend the applicant sufficient funds at reasonable rates.

(b) Participating loans under this section shall be limited by sections 155-9 to 155-13 for purposes of class "A" through class "I", the department's share not to exceed the maximum amounts specified therefor; provided that class "E" loans to food manufacturers shall not be subject to section 155-10.

(c) 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 state or national banks authorized to accept or hold deposits in the State of Hawaii, on unsecured short term loans made to borrowers who have the highest credit rating with those banks.

(d) 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 155-5.

(e) When a participating loan has been approved by the department, its share may be paid to the participating private lender for disbursement to the borrower.

(f) 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; and further provided that the private lender services the loan.

(g) 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.

(h) Security for participating loans shall be limited by the provisions of section 155-11. 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. [L 1959, c 278, pt of §1; am L Sp 1959 2d, c 1, §25; am L 1961, c 104, §1(f), (g), (h), and c 132, §2; Supp, §102-6; HRS §155-6; am L 1968, c 53, §§4, 5; am L 1989, c 222, §2 and c 261, §8; am L 1993, c 350, §4; am L 1997, c 258, §3; am L 1999, c 32, §3; am L 2000, c 51, §7; am L 2015, c 155, §5]

" **§155-6.5 Cooperation in loans by the department.** (a) The department of agriculture, for a fee, may underwrite and service loans for cooperating private lenders and government loan programs providing loan funds to qualified farmers and qualified food manufacturers. All fees shall be deposited into the agricultural loan reserve fund.

(b) Loans underwritten or serviced under this section shall not be subject to the restrictions in section 155-3.

(c) Loans underwritten or serviced under this section shall be limited by sections 155-1 and 155-9 to 155-12; provided that class "E" loans to food manufacturers shall not be subject to section 155-10. No class "D" and "F" loans shall be underwritten or serviced under this section.

(d) Loans underwritten or serviced under this section shall bear simple interest on the unpaid principal balance charged on the actual amount disbursed to the borrower. The interest rate on class "A", "B", "C", and "E" loans shall be at a rate of two per cent above the prime rate or at a rate of eight and one-half per cent a year, whichever is less. For purposes of this subsection, the prime rate

shall be determined on January 1 and July 1 of each year and shall be the prime rate charged by the two largest banks in the State identified by the department of commerce and consumer affairs. If the prime rates of the two largest banks are different, the higher prime rate of the two shall apply.

The director of commerce and consumer affairs shall publish a notice statewide pursuant to section 1-28.5 to specify the prime rate.

(e) For loans underwritten or serviced under this section, funds shall be disbursed in accordance with rules adopted by the department pursuant to chapter 91.

(f) The department and the cooperating lender may charge a filing fee for any application made under this section. However, the applicant shall pay for any actual expenses incurred.

(g) The department and the cooperating lender may mutually agree on underwriting criteria, functions, responsibilities, and fees for loan underwriting and loan servicing, by way of a memorandum of agreement. The memorandum of agreement shall be approved by the chairperson of the board of agriculture. [L 1999, c 294, §2; am L 2000, c 51, §8]

" **§155-7 REPEALED.** L 1997, c 258, §21.

" **§155-8 Direct loans.** (a) The department of agriculture may make loans directly to qualified farmers, qualified new farmers, or qualified food manufacturers who are unable to obtain sufficient funds at reasonable rates from private lenders either independently or under sections 155-5, 155-5.5, and 155-6.

(b) Loans made under this section shall be limited by sections 155-9 to 155-13; provided that class "E" loans to food manufacturers shall not be subject to [section] 155-10.

(c) Loans made under this section shall bear simple interest on the unpaid principal balance, charged on the actual amount disbursed to the borrower. The interest rate on loans of class "A", "B", "C", "E", and "G" shall be 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 less. For purposes of this subsection, the prime rate shall be determined on January 1 and July 1 of each year, and shall be the prime rate charged by the two largest banks in the State identified by the department of commerce and consumer affairs. If the prime rates of the two largest banks are

different, the lower prime rate of the two shall apply. The interest rate of class "F" loans shall be at a rate of one and one-half per cent below the prime rate or at a rate of six per cent a year, whichever is less. The interest rate of class "H" and "I" loans shall be three per cent a year. If the money loaned is borrowed by the department, then the interest on loans of the classes shall be the rate as determined above or one per cent over the cost to the State of borrowing the money, whichever is greater. Interest on loans made under this chapter shall not be less than three per cent a year.

(d) For loans made under this section, funds shall be disbursed in accordance with regulations of the department. [L 1959, c 278, pt of §1; am L Sp 1959 2d, c 1, §25; am L 1961, c 104, §1(j) and c 132, §2; Supp, §102-8; HRS §155-8; am L 1968, c 53, §6; am L 1972, c 87, §2; am L Sp 1977 1st, c 19, §1; am L 1979, c 222, §6; am L 1989, c 222, §3 and c 317, §2; am L 1990, c 259, §2; am L 1997, c 258, §4; am L 2000, c 51, §9; am L 2008, c 209, §3; am L 2011, c 184, §4; am L 2015, c 155, §6]

" **§155-9 Classes of loans; purposes, terms, eligibility.** (a) Loans made under this chapter shall be for the purposes and in accordance with the terms specified in classes "A" through "I" in this section and shall be made only to applicants who meet the eligibility requirements specified therein and except as to class "B" loans to associations and class "E" loans, the eligibility requirements specified in section 155-10. The maximum amount of a loan for class "A", "C", "D", and "F" loans to an individual applicant shall also apply to any loan application submitted by a partnership, corporation, or other entity, and for the purpose of determining whether the maximum loan amount to any individual will be exceeded, outstanding loans to any partnership, corporation, or other entity that the individual has a legal or equitable interest in excess of twenty per cent shall be taken into account.

(b) Class A: Farm ownership and improvement loans shall provide for:

- (1) The purchase or improvement of farm land;
- (2) The purchase, construction, or improvement of adequate farm dwellings, and other essential farm buildings; and
- (3) The liquidation of indebtedness incurred for any of the foregoing purposes.

The loans shall be for an amount not to exceed \$800,000 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 the applicant's income from and devote, or intend to devote, most of the applicant's time to farming operations; and (B) have or be able to obtain the operating capital, including livestock and equipment, needed to successfully operate the applicant's farm.

(c) Class B: Soil and water conservation loans shall provide for:

- (1) Soil conservation practices;
- (2) Water development, conservation, and use;
- (3) Drainage; and
- (4) The liquidation of indebtedness incurred for any of the foregoing purposes.

The loans shall be for an amount not to exceed \$35,000 to an individual or \$200,000 to an association and shall be for a term not to exceed twenty years for a loan to an individual and forty years to an association. To be eligible, an individual applicant shall have sufficient farm and other income to pay for farm operating and living expenses and to meet payments on applicant's existing debts, including the proposed soil and water conservation loan. An association, to be eligible, shall be a nonprofit organization primarily engaged in extending services directly related to the purposes of the loan to its members, and at least sixty per cent of its membership shall meet the eligibility requirements specified in section 155-10.

(d) Class C: Farm operating loans shall be for the purpose of carrying on and improving a farming operation, including:

- (1) The purchase of farm equipment and livestock;
- (2) The payment of production and marketing expenses, including materials, labor, and services;
- (3) The payment of living expenses;
- (4) The liquidation of indebtedness incurred for any of the foregoing purposes; and
- (5) The exportation of crops and livestock.

The loans shall be for an amount not to exceed \$800,000 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 the applicant's income from and devote, or intend to devote, most of the applicant's time to farming operations.

Qualified farmers affected by state eradication programs may also be eligible for loans under this subsection. Loans made for rehabilitation from eradication programs shall be subject to the terms of class "C" loans; provided that the interest rate shall be three per cent a year and the requirements in section 155-3 shall be waived and paragraph (4) shall not apply.

(e) Class D: Emergency loans shall be for the purpose of providing relief and rehabilitation to qualified farmers without limit as to purpose:

- (1) In areas stricken by extraordinary rainstorms, windstorms, droughts, tidal waves, earthquakes, volcanic eruptions, and other natural catastrophes;
- (2) On farms stricken by livestock disease epidemics and crop blights;
- (3) On farms seriously affected by prolonged shipping and dock strikes;
- (4) During economic emergencies caused by overproduction, excessive imports, and the like; and
- (5) During other emergencies as determined by the board of agriculture.

The maximum amounts and period for the loans shall be determined by the board of agriculture; provided that the board shall require that any settlement or moneys received by qualified farmers as a result of an emergency declared under this section shall first be applied to the repayment of an emergency loan made under this chapter.

(f) Class E: Loans to farmers' cooperatives, corporations, and food manufacturers shall provide credit to entities engaged in marketing, purchasing, and processing, and providing farm business services, including:

- (1) Facility loans to purchase or improve land, building, and equipment for an amount not to exceed \$500,000 and a term not to exceed twenty years;
- (2) Operating loans to finance inventories of supplies and materials, warehousing, and shipping commodities, extension of consumer credit to justified farmer-members, and other normal operating expenses for an amount not to exceed \$300,000 and a term not to exceed seven years; and
- (3) The exportation of crops and livestock.

To be eligible, a farmers' cooperative or corporation shall have a majority of its board of directors and a majority of its membership as shareholders who meet the eligibility requirements of section 155-10 and who devote most of their time to farming operations, and the facility loans shall be for an amount not to exceed \$500,000 or eighty per cent of the cost of the project, whichever is less.

To be eligible, a food manufacturer shall be licensed to do business in the State, and the controlling interest of the entity shall possess a minimum of two years of relevant processing or manufacturing experience as acceptable to the department of agriculture. The entity shall process Hawaii-grown agricultural products or use Hawaii-grown agricultural products as an ingredient in the manufacturing process. Facility loans shall be for an amount not to exceed \$500,000 or eighty per cent of the cost of the project, whichever is less. The requirements in section 155-10 shall be waived for food manufacturing loans; however, the entity shall be a sound credit risk with the ability to repay the money borrowed.

(g) Class F: New farmer and farm innovation loan programs shall provide for:

- (1) New farmer loans made under this class shall be for purposes and in accordance with the terms specified in class "A" and "C" only, and shall be made only for full-time farming. The loans shall be made for an amount not to exceed \$250,000 or eighty-five per cent of the cost of the project, whichever is less. Farm trainees and recent graduates with a degree in agriculture with smaller projects requiring loans of \$100,000 or less shall have a minimum five per cent equity contribution towards the cost of the project;
- (2) Farm innovation loans made under this class shall be for qualified farmers to perform practical research in crop development, innovative production techniques, new technologies, and production of new crops that are not typically grown in the State. Farm innovation loans shall be limited to a maximum of \$75,000;
- (3) Any subsequent loan shall be made from classes "A" to "D", respectively, depending upon the purpose for which the loan funds are used; and
- (4) Borrowers shall comply with special term loan agreements as may be required by the department

and shall take special training courses as the department deems necessary.

(h) Class G: Loans to part-time farmers shall be for farm improvement and operating purposes for carrying on and improving farming operations, including loans for:

- (1) The purchase, construction, and improvement of farm production and growing structures;
- (2) The purchase of farm equipment or livestock; and
- (3) The payment of production and marketing expenses, including materials, labor, and services.

The liquidation of indebtedness incurred for any of the purposes under this subsection and for living expenses shall not be authorized purposes. Each loan shall be for an amount not to exceed \$25,000 and for a term not to exceed ten years.

(i) Class H: Farm sustainable project loans shall provide for:

- (1) The purchase, construction, or improvement of essential farm buildings, including the improvement of existing farm buildings related to the project;
- (2) The improvement of land that may be required by the project;
- (3) The purchase of equipment and payment of any related expenses, including materials, labor, and services;
- (4) Operating expenses associated with the project;
or
- (5) The liquidation of indebtedness incurred for any of the foregoing purposes.

The loans shall be for an amount not to exceed \$1,500,000 or eighty-five per cent of the project cost, whichever is less, and for a term not to exceed forty years.

To be eligible, the applicant shall be a qualified farmer of sound credit rating with the ability to repay the money borrowed, as determined by the department. Income from the applicant's farming activities and any supplemental income that may be generated from the project shall be the sole criterion for the department's determination of the applicant's ability to repay the money borrowed. The department's determination may be based on projections of income and expenses.

(j) Class I: Biosecurity project loans shall provide for:

- (1) The purchase, construction, or improvement of essential farm buildings, including the

- improvement of existing farm buildings related to the project;
- (2) The improvement of land that may be required by the project;
 - (3) The purchase of equipment and payment of any related expenses, including materials, labor, signage, training, and services;
 - (4) Operating expenses associated with the project; or
 - (5) The liquidation of indebtedness incurred for any of the foregoing purposes.

The loans shall be for an amount not to exceed \$1,000,000 or eighty-five per cent of the project cost, whichever is less, and for a term not to exceed twenty-five years.

To be eligible, the applicant shall be a qualified farmer of sound credit rating with the ability to repay the money borrowed, as determined by the department. Income from the applicant's farming activities and any supplemental income that may be generated from the project shall be the sole criterion for the department's determination of the applicant's ability to repay the money borrowed. The department's determination may be based on projections of income and expenses. [L 1959, c 278, pt of §1; am L 1961, c 104, §1(k); Supp, §102-9; HRS §155-9; am L 1969, c 49, §1; am L 1972, c 87, §3; am L 1979, c 222, §7; am L 1982, c 63, §3; gen ch 1985; am L 1989, c 222, §4; am L 1990, c 230, §1; am L 1996, c 253, §1; am L 1999, c 32, §4 and c 157, §2; am L 2000, c 51, §10; am L 2001, c 267, §2; am L 2008, c 209, §4; am L 2011, c 184, §5; am L 2013, c 201, §4; am L 2015, c 155, §7]

" **§155-10 General eligibility requirements for loans.**

To be eligible for loans under this chapter, an applicant shall be:

- (1) A qualified farmer, a person under the new farmer program, or a part-time farmer;
- (2) A citizen of the United States who has resided in the State for at least three years, or any permanent resident alien who has resided in the State for at least three years; provided that this requirement shall not apply to applicants for class "D" loans who otherwise qualify;
- (3) A sound credit risk with the ability to repay the money borrowed; and
- (4) Willing to carry out recommended farm management practices. [L 1959, c 278, pt of §1; am L 1961, c

104, §1(1); Supp, §102-10; HRS §155-10; am L 1974, c 231, §2(2); am L 1990, c 259, §3; am L 2000, c 51, §11; am L 2001, c 141, §2]

" **§155-11 Security for loans; mortgages.** (a) Loans made under this chapter may be secured by duly recorded first mortgages upon the following property within the State:

- (1) Fee simple land;
- (2) Leaseholds of land where the lease has an unexpired term at least two years longer than the term of the loan;
- (3) Crops, livestock, and equipment; and
- (4) Other chattels.

(b) It also shall be lawful for the department of agriculture to require and accept as security for any loan:

- (1) A junior mortgage; or
- (2) Written agreements such as an assignment of income.

(c) For purposes of class "A" loans, no loan shall exceed eighty-five per cent of the value of the security offered. For purposes of class "B" and class "E" facility loans, no loan shall exceed eighty-five per cent of the value of the security offered. For purposes of class "C" loans and class "E" operating loans, the ratio of loan to the value of the security offered shall be discretionary with the department. For purposes of class "D" loans, the department, with the approval of the governor, may modify or waive any or all security requirements or any limitation with respect thereto.

(d) All security instruments for purposes of direct loans under section 155-8 shall be executed to and by the department. For purposes of insured loans under section 155-5, all security instruments shall be executed to and by the private lender; for purposes of participating loans under section 155-6 to and by the department and the private lender jointly.

(e) In case of the sale or transfer of the mortgaged land or goods in which the department has a security interest, as that term is defined in section 490:1-201, the department may permit the mortgage or encumbrance to be assumed by the purchaser. In case of the death of the borrower, the borrower's heir or heirs, or the borrower's legal representative or representatives, shall have the option within six months of the death to assume the mortgage of the deceased. The department or its agents, pending the exercise of the option and pending possession

being taken by the heirs or representatives, may take possession of all mortgaged property and carry on the operation connected therewith, and the expense of the same shall be added to the principal due upon the mortgage to bear interest at the applicable rate.

(f) If a loan is granted, the department shall cause the title to real property to be examined and a mortgage drawn and recorded. The applicant shall pay the actual costs involved. No class "A" loans shall be made on unsurveyed lands. [L 1959, c 278, pt of §1; am L Sp 1959 2d, c 1, §25; am L 1961, c 104, §1(m), (q) and c 132, §2; Supp, §102-11; HRS §155-11; am L 1969, c 49, §2; gen ch 1985; am L 1990, c 230, §2; am L 1996, c 253, §2; am L 1997, c 161, §1; am L 2000, c 51, §12; am L 2004, c 162, §2]

" **§155-12 Conditions.** Every borrower who is granted a loan under this chapter shall comply with the following conditions:

- (1) Expend no portion of the borrower's loan for purposes other than those sanctioned by the department of agriculture;
- (2) Carry out recommended management practices, including the keeping of proper records;
- (3) Not sell or otherwise dispose of the mortgaged property except on written consent of the lender, and except upon conditions as may be prescribed in writing by the lender;
- (4) Undertake to pay, when due, all taxes, liens, judgments, or assessments that may be lawfully assessed against the property mortgaged, together with the costs and expense of any foreclosure of the mortgage;
- (5) Keep insured to the satisfaction of the department all buildings and other insurable property covered by the mortgage. Insurance shall be made payable to the mortgagee as its interests may appear at the time of the loss. At the option of the lender, and subject to the general regulations of the department, sums so received may be used to pay for reconstruction of the buildings destroyed, or for decreasing the amount of the indebtedness;
- (6) Keep buildings in good repair; provide proper care for improvements, stock, and implements; keep land free from noxious weeds; and practice good systems of husbandry;

- (7) All of the above conditions shall be held and construed to be a provision of any mortgage executed by virtue of this chapter whether appearing as a provision of the mortgage or not; and
- (8) If the borrower is in default in respect to the above conditions, or any other conditions, or any other condition or covenant of the mortgage, the whole of the loan shall, at the option of the lender become due and payable forthwith. The lender may, with or without notice, take possession of the mortgaged property pending a foreclosure and may carry on the business pursuits upon the mortgaged premises, expending all reasonable sums therefor. The sums shall be a lien on the mortgaged premises and be recoverable in any foreclosure proceedings or otherwise. The lender may foreclose the mortgage by any method provided for by law. [L 1959, c 278, pt of §1; am L Sp 1959 2d, c 1, §25; am L 1961, c 104, §1(n) and c 132, §2; Supp, §102-12; HRS §155-12; gen ch 1985; am L 2000, c 51, §13]

" **§155-13 Repayment; refinancing.** (a) Loans made under this chapter shall be repaid in accordance with a payment plan specified by the lender, with payments applied first to interest and then to principal.

(b) Additional payments in any sums, or the payment of the entire principal, may be made at any date within the time period of the loan.

(c) The lender may, for satisfactory cause and at its discretion, extend the time within which the installments of principal may be paid for a period not to exceed two years; provided that the lender may further extend the time beyond the said two years for an additional period not to exceed three years if the borrower is in a state of extreme financial hardship which is caused by factors beyond the borrower's control, which factors include, but not limited to, the following: depressed prices, extended poor weather conditions, persistent crop failures, and rapidly increasing production costs not accompanied by a corresponding increase in the crop price.

(d) For loans in class "C" which are made to plant and cultivate land used for crops requiring eighteen months or more before first maturing, the department of agriculture may defer the first payment of principal and interest until the crop first matures; provided that:

- (1) The chairperson shall determine the commencement date for payment of the first installment. The chairperson may defer the initial payment on the principal of a loan, not to exceed five years from the date of issuance of the loan; and
- (2) The chairperson may defer the interest on the principal of a loan, not to exceed two years from the date of issuance of the loan.

For purposes of this subsection, "chairperson" means the chairperson of the board of agriculture.

(e) The borrower will be expected to refinance the balance owed on any direct loan as soon as the borrower is able to obtain credit from other sources at reasonable rates and terms. [L 1959, c 278, pt of §1; am L Sp 1959 2d, c 1, §25; am L 1961, c 104, §1(o), (p) and c 132, §2; Supp, §102-13; HRS §155-13; am L 1978, c 190, §1; gen ch 1985; am L 1995, c 78, §1; am L 1997, c 162, §1]

" **§155-14 Funds; application of payments.** (a) There is created a special fund to be known as the agricultural loan revolving fund, from which moneys shall be loaned by the department of agriculture under this chapter. The department, by its board of agriculture, may transfer moneys from the agricultural loan revolving fund to the aquaculture loan revolving fund, from which moneys shall be disbursed by the department pursuant to chapter 219, and may transfer moneys from that revolving fund to the agricultural loan revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred shall not exceed \$1,000,000 for each revolving fund within the calendar year; and
- (2) Twenty days prior to the convening of each regular session of the legislature, the department shall report to the legislature all transfers that were made between the agricultural loan revolving fund and the aquaculture loan revolving fund during the preceding calendar year and the balance of each revolving fund as of December 31 of each year.

(b) All interest and fees collected by the department shall be deposited in the agricultural loan reserve fund to the extent needed to carry on the operations of the department including payments for consultative services that would strengthen the agriculture loan program; any moneys surplus to these needs shall be transferred to the agricultural loan revolving fund at the discretion of the

department. All payments received on account of principal shall be credited to the agricultural loan revolving fund.

(c) A proper reserve shall be maintained in the agricultural loan revolving fund to guarantee payment of loans under section 155-5.

(d) All funds of the department shall be paid out on warrants signed by the chairperson of the board of agriculture. [L 1959, c 278, pt of §1; am L Sp 1959 2d, c 1, §25; am L 1961, c 132, §2; am L 1963, c 206, §2; Supp, §102-14; HRS §155-14; am L 1979, c 222, §8; am L 1987, c 110, §1; am L 1989, c 347, §2; am L 1992, c 69, §2; gen ch 1993; am L 1995, c 11, §2; am L 1996, c 253, §3; am L 1997, c 2, §3]

" **§155-15 REPEALED.** L 1995, c 77, §1.

"PART II. WATER INFRASTRUCTURE LOANS

[[§155-31] Definitions. As used in this part:

"Department" means the department of agriculture.

"Water infrastructure charge" means the on-bill charges for the use and services of the loan program, including the repayment of loans made under the loan program to be imposed on water utility customers.

"Water infrastructure equipment" means infrastructure improvements, equipment, and personal property to be installed for dams, reservoirs, hydroelectric pumping, storm water reclamation, ditch maintenance, spillways, wells, water ducts, and water distribution systems.

"Water infrastructure loans" and "loan program" means the program established by this part and loans made to finance the purchase or installation of water infrastructure equipment for dams, reservoirs, hydroelectric pumping, storm water reclamation, ditch maintenance, spillways, wells, water ducts, and water distribution systems.

"Water infrastructure special fund" means the special fund created pursuant to section 155-34. [L 2016, c 171, pt of §1]

" **[[§155-32] Hawaii water infrastructure loan program.** There is established a Hawaii water infrastructure loan program, which shall be a loan program as defined under section 39-51. The program shall be administered by the department in a manner consistent with chapter 39, part III. This loan program may include:

- (1) Loans made, on terms approved by the department, to private entities, whether corporations, partnerships, limited liability companies, or other persons, which entities may lease or provide water infrastructure equipment to utility customers; and
- (2) Direct loans to utility customers, on terms approved by the department. [L 2016, c 171, pt of §1]

" **[\$155-33] Powers of the department.** The department shall have the following powers:

- (1) Make loans and expend funds to finance the purchase or installation of water infrastructure equipment for dams, reservoirs, hydroelectric pumping, storm water reclamation, ditch maintenance, spillways, wells, water ducts, and water distribution systems;
- (2) Hold and invest moneys in the water infrastructure special fund in investments as permitted by law;
- (3) Hire employees necessary to perform its duties;
- (4) Enter into contracts for the service of consultants for rendering professional and technical assistance and advice, and any other contracts that are necessary and proper for the implementation of the loan program;
- (5) Enter into contracts for the administration of the loan program, in accordance with chapter 103D;
- (6) Establish loan program guidelines to carry out the purposes of this part;
- (7) Perform all functions necessary to effectuate the purposes of this part;
- (8) Delegate authority to the chairperson of the board of agriculture to approve loans where the requested amount plus any principal balance on existing loans to the applicant does not exceed \$25,000 of state funds; and
- (9) Adopt rules pursuant to chapter 91 necessary for the purpose of this part. [L 2016, c 171, pt of §1]

" **[\$155-34] Hawaii water infrastructure special fund.**

(a) There is established the Hawaii water infrastructure special fund into which shall be deposited:

- (1) Water infrastructure charges received for the use and services of the loan program, including the repayment of loans made under the loan program;
- (2) All other funds received by the department and legally available for the purposes of the water infrastructure special fund;
- (3) Interest earnings on all amounts in the water infrastructure special fund; and
- (4) Any other moneys permitted by the board of agriculture.

(b) Moneys in the water infrastructure special fund may be used for the purposes of:

- (1) Making water infrastructure loans;
- (2) Paying administrative costs of the loan program;
or
- (3) Paying any other costs related to the loan program. [L 2016, c 171, pt of §1]