

**CHAPTER 210**  
**CAPITAL LOAN PROGRAM**

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" **§210-1 Definitions.** As used in this chapter:

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

"Director" means the director of business, economic development, and tourism.

"SBA" means the Small Business Administration of the United States Government.

"SBIA" means the Federal Small Business Investment Act of 1958, as amended.

"Small business concern" means the business concerns that are defined in the Small Business Act, as amended (P.L. 87-367) and classified by the SBA in its size standards. [L 1963, c 76, §2; am L 1964, c 42, §3; Supp, §98R-2; HRS §210-1; am L 1987, c 336, §7; am L 1990, c 293, §8]

#### **Revision Note**

Numeric designations deleted and definitions rearranged.

" **§210-2 Hawaii capital loan program.** There is created a capital loan program which shall be administered by the director of business, economic development, and tourism in accordance with the spirit and intent of this chapter. [L 1963, c 76, §3; Supp, §98R-3; HRS §210-2; am L 1987, c 336, §7; am L 1990, c 293, §8]

" **§210-3 REPEALED.** L 2003, c 178, §7.

" **§210-3.5 REPEALED.** L Sp 1995, c 2, §3(3); L 1999, c 112, §2.

#### **Cross References**

For present provision, see §201-106.

" **§210-4 Functions, powers, and duties of director.** In the performance of, and with respect to, the functions, powers, and duties vested in the director by this chapter, the director of business, economic development, and tourism may:

- (1) Prescribe rules and regulations to carry out this chapter.
- (2) Perform all functions necessary to effectuate the purposes of this chapter. [L 1963, c 76, §5; Supp, §98R-5; HRS §210-4; gen ch 1985; am L 1987, c 336, §7; am L 1990, c 293, §8]

#### **Cross References**

Adoption of rules, see chapter 91.

" **§210-5 Rules and regulations.** The rules and regulations shall:

- (1) Prescribe the qualifications for eligibility of applicants for loans.
- (2) Establish preferences and priorities in determining eligibility for loans.
- (3) Establish the conditions, consistent with the purposes of this chapter, for the granting or for the continuance of a grant of a loan.
- (4) Provide for inspection, at reasonable hours, of the plant, books, and records of an enterprise which has applied for or has been granted a loan, and to require the submission of progress and final reports. [L 1963, c 76, §6; Supp, §98R-6; HRS §210-5]

" **§210-6 Direct loans, terms, and restrictions.** (a) The department of business, economic development, and tourism may make loans to small business concerns for the financing of plant construction, conversion, expansion, the acquisition of land for expansion, the acquisition of equipment, machinery, supplies, or materials, or for the supplying of working capital. The department may also make loans to assist businesses located in communities near military installations to develop infrastructure to minimize the possibility of or assist in the mitigation of the adverse effects of the closure or reduction in capacity of a military installation. The loans may be made in conjunction with loans made by other financial institutions, including the Small Business Administration. Where the loans made by the department are secured, the security may be subordinated to the loans made by other financial institutions, when the subordination is required to obtain loans from such institutions. The necessity for and the extent of security required in any loan shall be determined by the director of business, economic development, and tourism.

(b) The department may make loans to business concerns located in a county with a population of less than 150,000; provided that the interest on loans made under this subsection shall bear simple interest at the rate of three per cent below the prime rate or at a rate of five and one-half per cent a year, whichever is lower. For purposes of this subsection, the prime rate shall be determined on the first day of each month, 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 used. Payments required under loans made under this subsection may be deferred, but no loans made under this subsection shall be forgiven.

(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) Within counties of a 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 the first day of each month, and shall be the rate charged by the two largest banks in the State 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 used;
- (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.

(d) Except as may be expressly provided otherwise for loans made under subsection (b), any restriction or limitation in subsection (c) may be waived at the director's discretion where the applicant is a reuse or recycling business that meets the following criteria:

- (1) The business has potential to have an impact on overall solid waste reduction and achievement of the State's reduction goals;
- (2) The business addresses the alternative management of wastes identified by the solid waste disposal facility operators as problematic;

- (3) The business maximizes economic benefits through import reduction or an increase in the tax base;
- (4) The business has potential for job creation; and
- (5) The business has a plan that accurately reflects detailed and justifiable expenses and revenues, shows potential for profit, and an ability to meet market demand for end products.

(e) The department may contract with any financial institution for services including servicing or administering loans pursuant to this section.

(f) For purposes of this section, "financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including without limitation, banks, savings banks, savings and loan companies or associations, financial services loan companies, and credit unions. [L 1963, c 76, §7; am L 1964, c 42, §4; Supp, §98R-7; HRS §210-6; am L 1976, c 121, §1; am L 1979, c 134, §1; am L 1984, c 92, §1; am L 1986, c 257, §1; am L 1987, c 243, §1 and c 336, §7; am L 1988, c 152, §2; am L 1990, c 293, §8; am L 1994, c 202, §8; am L 1996, c 311, §§2, 4; am L 1998, c 104, §§4, 6 and c 118, §§7, 9, 11; am L 1999, c 113, §§2 to 5; am L 2002, c 95, §2; am L 2004, c 229, §2]

#### **Cross References**

Clean Hawaii fund, see §201-106.

" **§210-7 Loans to development companies.** (a) The department of business, economic development, and tourism may make loans to development companies incorporated in the State for the purpose of supplementing the funds required to be forthcoming to qualify development companies to receive financial assistance under Title V of SBIA. The loans shall be subject to terms and conditions established by the department as similar as possible to applicable terms and conditions prescribed by regulations adopted by SBA.

(b) Subject to the availability of funds, a request from the high technology development corporation for a transfer of funds to supplement appropriations for small business innovation research grants shall be granted expeditiously. If available funds are inadequate for a transfer to the development corporation, the director shall advise the development corporation that a transfer will be made when sufficient funds are available in the Hawaii capital loan revolving fund. [L 1964, c 42, §5; Supp, §98R-8; HRS §210-7; am L 1982, c 92, §6; am L 1987, c 336, §7; am L 1990, c 293, §8; am L 1991, c 85, §2]

" **[§210-7.5] 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. [L 1998, c 104, §2]

" **§210-8 Reports.** The department of business, economic development, and tourism shall make a report as of December 31 of each year of operations under this chapter to the governor, the president of the senate, and the speaker of the house of representatives, on the progress made under this chapter. These reports shall be submitted not later than February 1 immediately following the period covered by the report. [L 1963, c 76, §8; Supp, §98R-9; HRS §210-8; am L 1987, c 336, §7; am L 1990, c 293, §8]

#### **Cross References**

Due date of annual report, see §93-12.