

**CHAPTER 219**  
**AQUACULTURE LOAN PROGRAM**

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- " **§219-1 Findings and purpose.** The legislature finds that:
- (1) Aquaculture is a potentially viable industry for the State.
  - (2) Conventional financial institutions traditionally do not provide loans in the initiating stages for the establishment of new industries.
  - (3) No present state agency or program has the authority to financially assist an enterprise engaged in aquaculture.
  - (4) The State should initiate a loan program to assist aquaculture and the techniques of aquaculture as a new industry.

The purpose of this chapter is to establish a loan program to financially assist in the development of aquaculture in the State. [L 1971, c 181, pt of §1; ree L 1977, c 212, pt of §2]

" **§219-2 Definitions.** As used in this chapter:

"Aquaculture" means the propagation, cultivation, or farming of aquatic plants and animals in controlled or selected environments for commercial purposes or authorized stock enhancement purposes.

"Aquaculture sustainable projects" means projects that improve the operation's viability but are not directly tied to aquaculture 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.

"Board" means the board of agriculture of the department of agriculture.

"Chairperson" means the chairperson of the board of agriculture.

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

"Department" means the department of agriculture.

"Qualified aquaculturist" means a person, or association of persons, actively engaged in aquaculture farming, aquacultural produce processing, or aquacultural product development activities. [L 1971, c 181, pt of §1; am L 1977, c 212, pt of §2; am L 1997, c 159, §1; am L 2001, c 55, §8(1) and c 177, §3; am L 2008, c 209, §2]

" **§219-3 Hawaii aquaculture loan program.** There is established the Hawaii aquaculture loan program to be administered by the board of agriculture. [L 1971, c 181, pt of §1; ree L 1977, c 212, pt of §2]

" **§219-4 Funds; application of payments.** (a) There is established a special fund to be known as the aquaculture 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 aquaculture loan revolving fund to the agricultural loan revolving fund, from which moneys shall be disbursed by the department pursuant to chapter 155, and may transfer moneys from that revolving fund to the aquaculture 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 aquaculture loan revolving fund and the agricultural loan revolving fund during the preceding calendar year and the balance of each revolving fund as of December 31 of each year.

(b) All interests and fees collected by the department shall be deposited in a loan reserve fund to the extent needed to carry on the operations of this program; any moneys surplus to these needs shall be transferred to the aquaculture loan revolving fund at the discretion of the department. All payments received on account of principal shall be credited to the loan revolving fund. [L 1971, c 181, pt of §1; ree L 1977, c 212, pt of §2; am L 1978, c 88, §1; am L 1979, c 137, §4; am L 1987, c 110, §2; am L 1989, c 347, §3; am L 1992, c 69, §3; am L 1995, c 11, §14; am L 1996, c 253, §4]

" **§219-5 Powers; rules.** (a) The department shall have the necessary powers to carry out the purposes of this chapter, including the following:

- (1) Prescribe the qualifications for eligibility of applicants for loans;
- (2) Establish preferences and priorities in determining eligibility for loans and loan repayment requirements;
- (3) Establish the conditions, consistent with the purpose 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 facilities, books, and records of an enterprise that has applied for or has been granted a loan and require the submission of progress and final reports;
- (5) Make loans for aquacultural products development, such as 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, consistent with section 219-6;

- (6) Secure loans by duly recorded first mortgages upon the following property within the State:
  - (A) Fee simple farm land;
  - (B) Leaseholds of farm land where the lease has an unexpired term at least two years longer than the term of the loan;
  - (C) Aquaculture products;
  - (D) Other chattels;
  - (E) A second mortgage when any prior mortgage does not contain provisions that might jeopardize the security position of the department or the borrower's ability to repay; and
  - (F) Written agreements, such as assignments of income;
- (7) Administer the Hawaii aquaculture loan revolving fund and deposit into the fund all moneys received on account of principal;
- (8) Include in its budget for subsequent fiscal periods amounts necessary to effectuate the purposes of this chapter;
- (9) Insure loans made to qualified aquaculturists by private lenders under sections 219-7 and 219-8; provided that at no time shall the aggregate amount of the State's liability, contingent or otherwise, on these loans exceed \$1,000,000;
- (10) Participate in loans made to qualified aquaculturists by private lenders under section 219-8;
- (11) Make direct loans to qualified aquaculturists as provided under section 219-9;
- (12) Establish interest rates chargeable by the State for direct loans and by private lenders for insured and participation loans; and
- (13) Maintain a proper reserve in the aquaculture loan revolving fund to guarantee payment of loans insured under sections 219-7 and 219-8.

(b) The chairperson may approve loans, where the requested amount, plus any principal balance on existing loans to the applicant, does not exceed \$25,000 of state funds.

(c) The department shall adopt rules pursuant to chapter 91 to effectuate this section. [L 1971, c 181, pt of §1; am L 1977, c 212, pt of §2; am L 1978, c 88, §2; am L 1979, c 137, §2; am L 1995, c 76, §2; am L 1997, c 159, §2; am L 2002, c 16, §8(1)]

" **§219-6 Loan; limitation and terms.** Loans made under this chapter shall be for the purposes and in accordance with the terms specified in classes "A", "B", "C", "D", and "H" in paragraphs (1), (2), (3), (4), and (5) following and shall be made only to applicants who meet the eligibility requirements specified therein:

(1) Class A: Aquaculture farm ownership and improvement loans. To provide for:

- (A) The purchase or improvement of aquaculture farm land and waters;
- (B) The purchase, construction, or improvement of adequate aquaculture farm dwellings, and other essential aquaculture farm facilities; and
- (C) The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$400,000 and for a term not to exceed forty years. To be eligible, the applicant shall:

- (i) 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 aquaculture farming operations; and
- (ii) Have or be able to obtain the operating capital, including fishstock and equipment, needed to successfully operate the applicant's aquaculture farm;

(2) Class B: Aquaculture operating loans. To carry on and improve an aquaculture operation, including:

- (A) The purchase of aquaculture equipment and fishstock;
- (B) The payment of production and marketing expenses, including materials, labor, and services;
- (C) The payment of living expenses; and
- (D) The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$400,000 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 aquaculture operations;

(3) Class C: Aquaculture cooperative and corporation loans. To provide credit to aquaculturists' cooperative associations and corporations engaged in

marketing, purchasing, and processing, and providing farm business services, including:

- (A) 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; and
- (B) Operating loans to finance inventories of supplies, 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.

To be eligible, a cooperative or corporation shall have at least seventy-five per cent of its board of directors and seventy-five per cent of its membership as shareholders who meet the eligibility requirements prescribed by the board and who devote most of their time to aquaculture operations;

- (4) Class D: Emergency loans. To provide relief and rehabilitation to qualified aquaculturists without limit as to purpose:
  - (A) In areas stricken by extraordinary rainstorms, windstorms, droughts, tidal waves, earthquakes, volcanic eruptions, and other natural catastrophes;
  - (B) On farms stricken by aquatic diseases;
  - (C) On farms seriously affected by prolonged shipping and dock strikes;
  - (D) During economic emergencies such as those caused by overproduction and excessive imports; and
  - (E) During other emergencies as determined by the board.

The maximum amounts and period for the loans shall be determined by the board; provided that the board shall require that any settlement or moneys received by qualified aquaculturists 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; and

- (5) Class H: Aquaculture sustainable project loans shall provide for:
  - (A) The purchase, construction, or improvement of essential farm buildings, including the improvement of existing farm buildings related to the project;
  - (B) The improvement of land that may be required by the project;

- (C) The purchase of equipment and payment of any related expenses, including materials, labor, and services;
- (D) Operating expenses associated with the project; or
- (E) 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 aquaculturist of sound credit rating with the ability to repay the money borrowed, as determined by the department. Income from the applicant's aquacultural 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 1971, c 181, pt of §1; am L 1977, c 212, pt of §2; gen ch 1985; am L 1997, c 159, §3; am L 2000, c 52, §1; am L 2002, c 16, §8(2); am L 2008, c 209, §5]

" **§219-7 Loans insured by the department.**

- (1) 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 aquaculturist by a private lender who is unable otherwise to lend the applicant sufficient funds at reasonable rates;
- (2) Loans insured under this section shall be limited by the provisions of section 219-6;
- (3) Interest charged on an insured loan made under the provisions of this section shall be determined by the board;
- (4) 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;
- (5) 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 that:

- (A) On loans of \$75,000 or less with a maturity exceeding twelve months, a reduced fee of one per cent; and
- (B) 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;
- (6) 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;
- (7) Under conditions specified in rules 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 this section;
- (8) 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 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; and
- (9) The lender may reduce the percentage of the principal balance insured under this section at any time. [L 1977, c 212, pt of §2; am L 1995, c 79, §2; am L 2001, c 55, §8(2)]

" **§219-8 Participation in loans by the department.**

- (1) 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 aquaculturist by a private lender who is unable otherwise to lend the applicant sufficient funds at reasonable rates where the qualified farmer is unable to obtain sufficient funds for the same purpose from the United States Department of Agriculture;
- (2) Participation loans under this section shall be limited by the provisions of section 219-6 and the



department of agriculture's share shall not exceed the maximum amounts specified therefor;

- (3) 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 on secured short term loans made to borrowers who have the highest credit rating with those banks;
- (4) 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 section 219-7;
- (5) When a participation loan has been approved by the department, its share shall be paid to the participating private lender for disbursement to the borrower. The private lender shall collect all payments from the borrower and otherwise service the loan;
- (6) 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;
- (7) 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; and
- (8) Security for participation loans shall be limited by section 219-5(a)(6). 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 1977, c 212, pt of §2; am L 1989, c 261, §11; am L 1993, c 350, §10; am L 1997, c 258, §13; am L 2001, c 55, §8(3)]

" **§219-9 Direct loans.** (a) The department of agriculture may make loans directly to qualified aquaculturists who are unable to obtain sufficient funds at reasonable rates from private lenders either independently or under section 219-7 or 219-8. Loans made under this section shall be authorized only if loans cannot be obtained from the relevant farm credit lender and two other private lenders.

(b) Loans made under this section shall be limited by section 219-6.

(c) Loans made under this section shall bear simple interest on the unpaid principal balance, charged on the actual amount disbursed. The interest rate for class "A", class "B", class "C", and class "H" loans shall be set by rule, pursuant to chapter 91.

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

(e) 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 1995, c 76, §1; am L 1998, c 118, §8; am L 2008, c 209, §6]