

ACT 192

S.B. NO. 1738

A Bill for an Act Relating to Community-based Economic Development.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the community-based economic development program established in 1990, to increase self-determination and diversification in Hawaii's communities through a revolving fund and technical assistance, has provided assistance to twenty-eight organizations statewide and leveraged state funds seven times over with the creation of two hundred nineteen business start-ups and expansions.

The legislature further finds that there is a need to clarify program definitions and functions, differentiate the Hawaii community-based economic development program from other programs that are labelled "community-based," and provide additional financing mechanisms to ensure the continued success of the community-based economic development program.

SECTION 2. Section 210D-1, Hawaii Revised Statutes, is amended to read as follows:

"[[§210D-1]] Findings and purpose. The legislature finds that:

- (1) It is in the best interest of the State to bring about a diversification of opportunities in all aspects of life for the residents and communities of the State;
- (2) [Traditional and small community-based] Community-based enterprises play an important part in providing [the] a diversification of opportunities for Hawaii's residents and communities;
- (3) [Traditional and small community-based] Community-based enterprises [exist in Hawaii and] are characterized by their interests not only in profits but in community empowerment, that is, building the community to enable it to be [self-sufficient,] more self-reliant, which encourages diversification of opportunities for Hawaii's residents and communities;
- (4) [Traditional and small community-based] Community-based enterprises have the potential to increase [self-sufficiency,] self-determination, provide employment opportunities, strengthen community identity, retain and create community cultural anchors, and reinforce community social, cultural, economic, and spiritual values, and are thus of crucial importance in securing the diversification of opportunities;
- (5) Programs to develop [traditional and] community-based enterprises have the potential to increase [self-sufficiency] self-reliance and provide employment opportunities to Hawaii's people;
- (6) Conventional financial institutions traditionally do not provide loans to [initiate the establishment of] establish or expand community-based

enterprises [or to initiate establishment or expansion of traditional enterprises];

- (7) No present state agency or program has the authority to financially assist [traditional and small] community-based enterprises; and
- (8) The State should initiate a program to assist community-based enterprises through loans [and], grants[.], and technical assistance.

The purpose of this chapter is to establish a program of [loans and grants to financially] technical and financial assistance for community-based organizations to assist the establishment and development of [traditional and small] community-based enterprises in the State.”

SECTION 3. Section 210D-2, Hawaii Revised Statutes, is amended to read as follows:

“**[§210D-2] Definitions.** As used in this chapter:

“Community-based economic development” means [a business or enterprise that can be carried on a small scale in a neighborhood, such as, but not limited to, a cottage industry; export-oriented arts, crafts and fashion operations; and backyard fish farming.] a community institution-building process that results in community-based enterprises and other economic development activities which are designed and implemented by a community; consistent with a community’s values, culture, and vision; and intended to increase community control over local resources and decision-making processes.

“Community-based organization” means a membership-based, nonprofit corporation incorporated in the State of Hawaii that is organized and controlled by either a geographic community, a community of identity, or a community of interest and which is directly involved in community-based economic development activities.

“Community of identity” means a group of people who may not live in the same geographic area but who are bound together through a common ethnicity or other personal characteristic such as age or social status.

“Community of interest” means a group of people who may not live in the area but who are bound together through a common economic interest such as coffee growers or an aquaculture cooperative.

“Council” means the community-based economic development advisory council.

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

[“Traditional industry” means an industry or enterprise traditionally carried on by native Hawaiians, such as taro farming.]”

SECTION 4. Section 210D-3, Hawaii Revised Statutes, is amended to read as follows:

“**[§210D-3] Hawaii community-based economic development [loan and grant] technical and financial assistance program.** There is established the Hawaii community-based economic development [loan and grant] technical and financial assistance program, placed within the department.”

SECTION 5. Section 210D-4, Hawaii Revised Statutes, is amended to read as follows:

“**§210D-4 Hawaii community-based economic development revolving fund; established.** There is established a revolving fund to be known as the Hawaii

community-based economic development revolving fund from which moneys shall be loaned [or], granted by the department under this chapter. All moneys appropriated to the fund by the legislature, received [in repayment] as repayments of [loan principal, or payment] loans, payments of interest[, and] or fees, received as royalties, shall be deposited into the revolving fund and used for the purposes of this chapter. The department may use all appropriations and other moneys in the revolving fund not appropriated for a designated purpose to make grants or loans, provided that at no time shall the department reallocate funds from the loan program to the grant program so that insufficient funds remain available to make loans.”

SECTION 6. Section 210D-5, Hawaii Revised Statutes, is amended to read as follows:

“[§210D-5] Community-based economic development advisory council; established. There is established the community-based economic development advisory council, which shall consist of [eleven] twelve members. The director of business, economic development, and tourism [and], the chairperson of the board of agriculture, and the chairperson of the office of Hawaiian affairs, or their respective designees, shall be ex officio voting members of the council. The remaining nine members shall be appointed by the governor in accordance with section 26-34. Each county shall be represented by at least one member who is a resident of that county, and at least one member of the council shall be a representative of the financial community. The council shall be placed for administrative purposes in the department of business, economic development, and tourism.”

SECTION 7. Section 210D-7, Hawaii Revised Statutes, is amended to read as follows:

“[§210D-7] Authority of council. The council shall review all [business plans, except financial statements or personal information,] requests for financial assistance to assess whether the proposed [business] community-based economic development activity or enterprise is likely to achieve the purposes of this chapter. The council shall make recommendations to the department regarding the appropriateness of the proposed [business] activity or enterprise, and the department shall then have final authority to approve or disapprove the [loan or grant] application[.] for financial assistance.”

SECTION 8. Section 210D-8, Hawaii Revised Statutes, is amended to read as follows:

“[§210D-8] Powers and duties. The department shall have the necessary powers to carry out the purposes of this chapter, including the following:

- (1) With advice from the council, prescribe the qualifications for eligibility of applicants for loans[;] and grants;
- (2) With advice from the council, establish preferences and priorities in determining eligibility for [loans and loan repayment requirements;] financial assistance;
- (3) Establish the conditions, consistent with the purpose of this chapter, for the [granting or for the continuance of a loan;] awarding of financial assistance;
- (4) Provide for inspection at reasonable hours of [the plant] facilities, books, and records of a community-based [business or enterprise] organization which has applied for or has been [granted a loan]

- awarded financial assistance and require the submission of progress and final reports;
- (5) [Make] Provide loans [and], and grants for [traditional or small] community-based economic development activities and community-based enterprises[, including loans or grants for start-up 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,] for purposes consistent with this chapter;
 - (6) Determine the necessity for and the extent of security required in a loan;
 - (7) Prescribe and provide appropriate management counseling and monitoring of business activities;
 - (8) Administer the Hawaii community-based economic development revolving fund;
 - (9) Include in its budget for subsequent fiscal periods amounts necessary to effectuate the purposes of this chapter;
 - (10) Participate in loans made to qualified persons by private lenders;
 - (11) Establish interest rates chargeable by the State for direct [loans] and [by private lenders for] participation loans; and
 - (12) Adopt rules pursuant to chapter 91 to implement this chapter.”

SECTION 9. Section 210D-9, Hawaii Revised Statutes, is amended to read as follows:

“**[§210D-9] Loans; limitation and terms.** Loans made under this chapter shall be for the purposes and in accordance with the terms specified in [classes “A” and “B” in] paragraphs (1) and (2) and shall be made only to applicants who meet the eligibility requirements specified therein.

- (1) [Class A community-based] Community-based enterprise [ownership] establishment and improvement loans may be made [only] to provide for:
 - (A) The start-up costs, purchase or improvement of a [traditional or] community-based enterprise[;] or working capital; and
 - (B) The purchase, construction, or improvement of facilities[.];

and
[The loans shall be for an amount not to exceed \$500,000 and for a term not to exceed twenty years.]

- (2) [Class B operating] Operating loans may be made [only] to carry on and improve an existing enterprise, including:
 - (A) The purchase of equipment; and
 - (B) The payment of production and marketing expenses including materials, labor, and services.

The loans shall be for an amount not to exceed \$500,000 and for a term not to exceed [twenty] ten years.”

SECTION 10. Section 210D-10, Hawaii Revised Statutes, is amended to read as follows:

“**[§210D-10] Terms of loans.** Loans shall be made to qualified applicants with the following terms and conditions:

- [(1) No loan shall be granted unless financial assistance is not otherwise available to the applicant;

- (2)] (1) The amount of the outstanding balance on all loans issued under this chapter to any one applicant at any one time shall not exceed \$500,000;
- [(3)] (2) The maximum term of a loan shall not exceed [twenty] ten years;
- [(4)] (3) Each loan shall bear simple interest at a rate of not less than three and not more than ten per cent a year, depending on the nature of the loan; and
- [(5)] (4) The commencement date for the repayment of the first installment on principal and interest of each loan may be deferred by the director of business, economic development, and tourism for a period not to exceed two years."

SECTION 11. Section 210D-11, Hawaii Revised Statutes, is amended to read as follows:

"§210D-11 Grants; conditions and qualifications. (a) Grants shall be made for amounts not to exceed [\$500,000] \$100,000 for each applicant. Applications for grants shall be made to the department and contain such information as the department shall require by rules adopted pursuant to chapter 91. At a minimum, the applicant must show that:

- (1) The grant shall be used exclusively for [a traditional or small] community-based economic development activities or a community-based business or enterprise that are consistent with the purposes of this chapter for a continuous period of at least five years;
- (2) The [traditional or small] community-based business or enterprise shall have applied for or received all applicable licenses and permits;
- (3) The applicant will comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, or physical handicap;
- (4) The grant shall not be used for purposes of entertainment or perquisites;
- (5) The applicant shall comply with other requirements as the department of business, economic development, and tourism may prescribe;
- (6) All activities and improvements undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules;
- (7) The applicant will indemnify and save harmless the State of Hawaii and its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the department; and
- (8) The facilities will not be used and are not intended to be used for sectarian instruction or as a place of worship.

(b) To receive a grant hereunder for community-based economic development activities or development of a [traditional or small] community-based enterprise, an applicant shall:

- (1) Be either:
 - [(A)] An individual or association who, at the date of the application, has owned and operated a traditional or small community-based business or enterprise for at least two years; or
 - [(B)] (A) A profit subsidiary of a nonprofit community-based organization incorporated under the laws of the State; or
 - [(C)] (B) A nonprofit community-based organization determined to be exempt from federal income taxation by the Internal Revenue Service; or

[(D)] (C) A cooperative association.

- (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation, have bylaws or policies which describe the manner in which business is conducted and policies relating to nepotism and management of potential conflict of interest situations, and employ or contract with no two or more members of a family or kin of the first or second degree unless specifically permitted by the department;
- (3) Agree to make available to the department all records the applicant may have relating to the operation of the [traditional or] community-based enterprise, to allow state agencies to monitor the applicant's compliance with the purpose of this chapter; and
- (4) Establish, to the satisfaction of the department, that sufficient funds are available for the effective operation of the activity, business, or enterprise for the purpose for which the grant is awarded.

[(c) Prior to the adoption of rules pursuant to section 210D-8, the department may provide grants to applicants who meet the minimum criteria for eligibility set forth in this chapter.]”

SECTION 12. Section 210D-12, Hawaii Revised Statutes, is amended to read as follows:

“**[[§210D-12]] Priorities and preferences.** In selecting applicants for funding, the department shall make every effort to ensure that [traditional and small] community-based economic development activities and community-based enterprises are distributed throughout the State.”

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval.

(Approved June 17, 1996.)