

ACT 118

H.B. NO. 3443

A Bill for an Act Relating to Loans.

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

PART I.

SECTION 1. The legislature finds that certain counties in the State are economically depressed, exhibiting unemployment rates in excess of seven per cent. These high unemployment rates are directly attributable to the closure of sugar operations. However, diversified agriculture stands as an opportunity to employ the agriculturally-oriented labor force that once worked for the sugar industry on land once used to grow sugar.

The purpose of this part is to facilitate the development of diversified agriculture in these depressed areas by initiating a pilot loan project. The department of agriculture shall earmark loan funds from its agricultural loan revolving fund to qualified applicants from these depressed areas.

SECTION 2. In addition to any loan authorized under chapter 155, Hawaii Revised Statutes, the department of agriculture shall make loans from the agricultural loan revolving fund to qualified farmers in economically depressed areas under the following conditions:

- (1) Loans shall be limited to class "C" farm operating loans;
- (2) Loans shall not exceed \$200,000 each;
- (3) Interest charged on direct loans shall not exceed five per cent per year simple interest;
- (4) Interest charged on loans in participation shall not exceed five per cent per year simple interest. Interest charged on the private lender's share of the loan shall not exceed two per cent above 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;
- (5) The term of each loan shall not exceed twelve years;
- (6) The commencement date for the repayment on the first installment on the principal or interest of each loan may be deferred by the chairperson of the board of agriculture for a period not to exceed twenty-four months; and
- (7) The credit elsewhere requirement shall be waived.

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

As used in this section, "economically depressed areas" means islands having unemployment rates in excess of seven per cent.

SECTION 3. The department of agriculture shall report on loans to qualified farmers in economically depressed areas from the agricultural loan revolving fund in its annual report.

SECTION 4. There is appropriated out of the agricultural loan revolving fund the sum of \$2,000,000 for fiscal year 1998-1999 for loans to farmers in economically depressed areas.

The sum appropriated shall be expended by the department of agriculture for the purposes of this part.

SECTION 5. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
ECONOMIC DEVELOPMENT LOANS**

§ -1 **Definitions.** As used in this chapter, unless the context requires otherwise:

“Committee” means the economic development administrative procedures loan committee established in section -3.

“Fund” means the economic development loan fund established in section -2.

§ -2 **Economic development loan fund; establishment.** Notwithstanding any other provision to the contrary, there is established a special fund within the state treasury to be known as the economic development loan fund into which may be deposited moneys from economic development loans that are available to the department of business, economic development, and tourism, and the department of agriculture.

§ -3 **Economic development administrative procedures loan committee; establishment.** The economic development loan fund shall be administered by the economic development administrative procedures loan committee, which shall be composed of seven members as follows:

- (1) The director of business, economic development, and tourism, or designee, as an ex officio member;
- (2) The chair of the board of agriculture, or designee, as an ex officio member; and
- (3) Five members of financial institutions in the State, who shall be appointed by the governor pursuant to section 26-34.

The loan committee shall establish procedures, subject to the approval of the directors of agriculture and business, economic development, and tourism, under which financial institutions shall access the economic development loan fund, including fees, charges, the amount and form of security, and loan terms.

Members shall serve without pay but shall be reimbursed for their actual and necessary expenses, including travel expenses incurred in carrying out their duties.”

PART II.

SECTION 6. Section 209-26, Hawaii Revised Statutes, is amended to read as follows:

“§209-26 Administration. (a) Except as otherwise provided, the director of business, economic development, and tourism is designated as the administrator responsible for the administration of this part. The director shall:

- (1) Administer loans for the purpose and according to this part; and
- (2) [Promulgate] Adopt rules [and regulations] to carry out the purposes of this part.

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

(c) 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.”

SECTION 7. Section 210-6, Hawaii Revised Statutes, is amended to read as follows:

“**§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 loans may be made in conjunction with loans made by other financial institutions, including the [SBA.] 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 [in order] 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 foregoing powers shall be subject, however, 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 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) 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 January 1 and July 1 of each year, 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 [utilized.] 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.

(c) Any restriction or limitation in subsection (b) 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.

(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.”

SECTION 8. Section 219-9, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§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”, and class “C” 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.”

SECTION 9. Act 311, Session Laws of Hawaii 1996, is amended by amending section 2 to read as follows:

“SECTION 2. Section 210-6, Hawaii Revised Statutes, is amended to read as follows:

“§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 loans may be made in conjunction with loans made by other financial institutions, including the [SBA.] 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 [in order] 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 January 1 and July 1 of each year, 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 [utilized.] 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 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) 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 January 1 and July 1 of each year, 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 [utilized;] 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.'''

PART III.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval; provided that:

- (1) Part I shall take effect on July 1, 1998, and shall be repealed on June 30, 2000; and
- (2) Section 7 shall take effect on July 1, 1999.

(Approved June 22, 1998.)